

**In The Matter Of:**

***THE FAIRCHILD CORPORATION vs. ALCOA CORPORATION***

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**ARBITRATION**

***February 28, 2007***

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***MERRILL LEGAL SOLUTIONS***

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***New York, NY 10170***

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**ARBITRATION - Vol. 8**

CPR INSTITUTE OF DISPUTE RESOLUTION

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In Re

THE FAIRCHILD CORPORATION,

Claimant,

-against-

ALCOA CORPORATION,

Respondent.

-----x

Cravath, Swaine & Moore, LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York

February 28, 2007

9:15 a.m.

B E F O R E:

JAMES F. STAPLETON, Arbitrator

TAMMEY M. PASTOR, RPR, CLR, Hearing Reporter

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1 ROBERT SHOFSTALL - REDIRECT  
 2 this is notice.  
 3 A. Yes.  
 4 Q. Turn back, I think you reference  
 5 this on direct, but let's make sure we have it.  
 6 Tab 7 second page. What do you understand this  
 7 to be?  
 8 A. I understand that to be the meeting  
 9 minutes of, the minutes of the meeting with the  
 10 DRIRE on 30 July 2003.  
 11 Q. Sorry July 30, 2003?  
 12 A. 30 July 2003.  
 13 Q. That some months before the Phase  
 14 II report we just looked at; right?  
 15 A. Yes it is.  
 16 Q. What kind of information -- do you  
 17 read this to be minutes of a meeting in which  
 18 Alcoa conveyed information to the DRIRE about  
 19 the Montbrison facility and investigations going  
 20 on there?  
 21 A. The question did they convey  
 22 information?  
 23 Q. Yes. Is that what this is  
 24 reflecting?  
 25 A. Yes, it is.

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1 ROBERT SHOFSTALL - REDIRECT  
 2 Q. Is it also reflecting in your view  
 3 an action, a plan to go forward? Look at, for  
 4 example page 3 do you see there I know it is a  
 5 terrible translation, but the second bullet  
 6 point.  
 7 A. The part we were talking about  
 8 earlier --  
 9 Q. Yes. Does that make any comments  
 10 on the action plan proposed by the site? Do you  
 11 see that there?  
 12 A. Yes.  
 13 MR. SLIFKIN: Sorry, where?  
 14 MR. ZUROFSKY: Second bullet  
 15 point.  
 16 MR. SLIFKIN: On page 3?  
 17 MR. ZUROFSKY: Page 3.  
 18 Q. There are bullet point, fourth  
 19 paragraph, second bullet point. English version  
 20 of the second bullet point. I will read it for  
 21 the sake of completion?  
 22 "Mr. Gorse underlines, obviously it  
 23 is a tricky translation is agreeable surprised  
 24 by advancement studies carried out. It does not  
 25 make any comments on the action plan proposed by

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1 ROBERT SHOFSTALL - RECROSS  
 2 the site." See that, Mr. Shofstall?  
 3 A. Yes.  
 4 Q. That indicate to you there had been  
 5 proposals made?  
 6 A. Absolutely, yes.  
 7 MR. ZUROFSKY: I have not going  
 8 further.  
 9 THE ARBITRATOR: Thank you.  
 10 We are not going to go over the same ground  
 11 again; are we?  
 12 MR. SLIFKIN: No, I just have two  
 13 questions.  
 14 RE-CROSS-EXAMINATION BY MR. SLIFKIN:  
 15 Q. Mr. Shofstall, you see the two  
 16 lower shelves of this bookcase, the binders with  
 17 the blue labels?  
 18 A. Yes.  
 19 Q. Have you read those?  
 20 A. Can I go see what they are?  
 21 Q. Sure.  
 22 A. I see correspondence,  
 23 correspondence, correspondence, correspondence.  
 24 So you're asking me if I read all the  
 25 correspondence?

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1 SUSAN HALL - DIRECT  
 2 Q. Yes. That is the correspondence,  
 3 that is all correspondence from Alcoa to  
 4 Fairchild. One way. Have you read that?  
 5 A. I cannot represent to you that I  
 6 read all the correspondence. I know I have read  
 7 some correspondence that was provided to me.  
 8 Q. Okay. Last question. Isn't it  
 9 true, sir, that you don't have any experience  
 10 post acquisition involving an indemnity  
 11 provision?  
 12 A. Post acquisition Indemnity  
 13 Agreement? That would be correct, sir.  
 14 MR. SLIFKIN: Thank you very much.  
 15 THE ARBITRATOR: Thank you.  
 16 You're excused.  
 17 (Witness excused.)  
 18 SUSAN HALL,  
 19 having been first duly sworn by the Notary  
 20 Public (Tammey M. Pastor), was examined and  
 21 testified as follows:  
 22 MR. ZUROFSKY: Your Honor, our  
 23 next witness will be Ms. Hall.  
 24 MR. SLIFKIN: If you may, your  
 25 Honor, I will excuse myself but I will be back.

54 (Pages 2730 to 2733)

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1 SUSAN HALL - DIRECT  
2 DIRECT-EXAMINATION BY MR. ZUROFSKY:  
3 Q. Good afternoon, Ms. Hall.  
4 A. Good afternoon.  
5 Q. By whom are you currently  
6 employed --  
7 THE ARBITRATOR: Why don't you  
8 start with your full name.  
9 MR. ZUROFSKY: Fair enough.  
10 Q. Why don't you state your full name  
11 for the record.  
12 A. Susan L. Hall.  
13 Q. By whom are you currently employed?  
14 A. Fairchild Corporation.  
15 Q. In what capacity?  
16 A. I am the environmental counsel at  
17 the Fairchild Corporation.  
18 Q. How long have you been with the  
19 Fairchild Corporation?  
20 A. About two years and four, five  
21 months.  
22 Q. Roughly what, October 2004 around  
23 there?  
24 A. That's when I started, yes.  
25 Q. Do you have experience dealing with

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1 SUSAN HALL - DIRECT  
2 Q. What are your current  
3 responsibilities at Fairchild?  
4 A. I am currently responsible for our  
5 environmental sites. We have sites that are  
6 undergoing remediation in a number of states,  
7 Massachusetts, Florida, Michigan, Wisconsin, and  
8 a number in Southern California. I supervise  
9 the remediation projects. I deal most directly  
10 with our environmental consultants.  
11 I have also had occasion to deal  
12 with the regulators in terms of our remediation  
13 approaches.  
14 Q. Do you also serve as Fairchild's  
15 designated representative with respect to the  
16 Alcoa relationship?  
17 A. I do.  
18 Q. On environmental matters.  
19 A. Yes, I do. I was designated -- I  
20 became the designated representative for  
21 Fairchild in, I think February of 2005.  
22 Q. Are you familiar with the  
23 environmental indemnification provisions of the  
24 Acquisition Agreement between the parties?  
25 A. Yes, I am somewhat familiar.

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1 SUSAN HALL - DIRECT  
2 Environmental Law?  
3 A. I do have experience.  
4 Q. Describe that experience.  
5 A. I was in private practice from  
6 19956 following a clerkship until. As both an  
7 associate and a partner in a private practice I  
8 dealt with, I represented clients against EPA  
9 actions, I was a member of PRP group. You know  
10 what that is, potentially responsibility party  
11 groups.  
12 I have dealt with regulators.  
13 Things of that nature.  
14 Q. Does that include either in private  
15 practice or at your time at Fairchild work on  
16 Southern California environmental regulatory  
17 items?  
18 A. Yes. Did you ask me what I do  
19 specifically at Fairchild or just my background?  
20 Q. No, I am just asking if you have  
21 that background.  
22 A. Yes.  
23 Q. Do you have a background in OSHA  
24 compliance?  
25 A. No, I don't.

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1 SUSAN HALL - DIRECT  
2 Q. Sorry?  
3 A. I said I am somewhat familiar with  
4 them, yes.  
5 Q. Do you have an understanding of any  
6 rights Fairchild might have to participate in  
7 connection with actions taken by Alcoa?  
8 A. Yes, I do.  
9 Q. Describe that understanding for us,  
10 please.  
11 A. My understanding is that Fairchild  
12 has a number of rights to participate in terms  
13 of actions that Alcoa will either contemplate  
14 taking or may take.  
15 We have the right to be consulted  
16 on various things. We have the right to comment  
17 on proposed responses to environmental actions.  
18 Basically consistent with the good faith  
19 obligations that are implied in the contract we  
20 have an opportunity to essentially work with  
21 Alcoa and be heard.  
22 Q. Are those important rights to  
23 Fairchild?  
24 A. Yes, they are.  
25 Q. Why is that?

55 (Pages 2734 to 2737)

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SUSAN HALL - DIRECT

A. Because if there is a potential or actual Fastener Environmental Liability for which Fairchild is going to have to indemnify Alcoa, we obviously want to be involved.

Q. Ms. Hall, in connection with your role as Fairchild's designated representative, have you had the opportunity to review all the correspondence between Alcoa and Fairchild related to the claims at issue in this case?

A. I can't say all, but I would certainly think that most all. I am not aware of anything that I haven't seen.

Q. You just don't want to swear you have seen everything that is out there?

A. Yes. When I look over here, it is somewhat daunting.

Q. Based upon your knowledge you have, Ms. Hall, has Alcoa honored Fairchild's participation rights in connection with the claims it is making here for indemnification?

A. Generally they have not.

Q. By generally what are you excepting from that answer? Let me come at it another way. We heard some testimony about this.

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SUSAN HALL - DIRECT

This is a summary chart. There is a breakdown behind it?

THE ARBITRATOR: This is under tab?

MR. ZUROFSKY: 2 of Ms. Hall's binder.

Q. Ms. Hall, why don't we walk through this chart a little bit. What is this chart, just generally speaking before we get into the columns and rows, what does this information convey?

A. This is a chart that has three categories. On the broad picture it is claims that Alcoa has made in which they have failed to accord Fairchild the right to participate.

Q. Let's walk through, you said there is three categories. Is the first category the one on the left there the heading is Items For Which Alcoa Has Admitted Its Failure to Honor Fairchild's Participation Rights?

A. That's correct.

Q. What -- it is broken into two sub columns maybe take them in order. What is represented by this category?

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SUSAN HALL - DIRECT

Prior to undertaking the Phase IIs Alcoa met with Michael Hodge about the scopes of work. Are you aware of that?

A. Yes I am.

Q. In that sense would you say with respect to the Phase IIs Alcoa honored Fairchild's, somewhat honored Fairchild participation rights?

A. Yes.

Q. Is there any other item you're aware of on which you can say Alcoa has honored Fairchild's participation rights?

A. No.

Q. Why do you say that?

A. Because the pattern that was established by the time I came on board was one where Alcoa was unilaterally taking the lead on activities related to environmental issues without including Fairchild in the process. Our participation rights were simply ignored.

Q. Just to introduce tab 2 of your binder there is Claimant's 455 there should be two demonstrative sites which we sent to the other side last night, your Honor.

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SUSAN HALL - DIRECT

A. The first column that is captioned Chart Distributed At the Hearing, these are the items that Alcoa admitted at the first arbitration hearing that Fairchild had not been given any notice of.

The second chart which is captioned Correspondence From Alcoa consists of items that appeared in letters from John Lease to Fairchild. I think the dates of those letters were in July of 2005. And February of 2006. In which Mr. Lease had asterisked items that Alcoa admitted Fairchild had not been given notice of.

There is no overlap between these two.

Q. Go ahead. Sorry.

A. The items that are in the second column are distinct from the ones in the first column. So that you have a total that is in excess of 3.6 million.

Q. Let's look at the sub column, first sub column, the one that says Chart Distributed At the Hearing. Let's call it category 1A if you will.

A. Okay.

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1 SUSAN HALL - DIRECT  
 2 Q. If you turn to tab 6 of your  
 3 binder, is this the chart you were referring to  
 4 that Alcoa handed out at the first week of the  
 5 hearing?  
 6 A. Yes. That is the chart.  
 7 Q. The total there, if you turn to the  
 8 pages are these the same items that are listed?  
 9 A. Yes. As you can see the total is  
 10 \$2,115,831 which is exactly the amount on the  
 11 first what we are calling column A.  
 12 Q. Let's look at column B. You  
 13 mentioned Mr. Lease's letters. Are those the  
 14 letters found behind tabs 3 and 4, first one  
 15 being Alcoa arbitration C, bulk Exhibit C volume  
 16 5 of 22. The second one being Alcoa Arbitration  
 17 Exhibit C volume 7 of 22?  
 18 THE ARBITRATOR: Are they in the  
 19 book?  
 20 MR. ZUROFSKY: They are in the  
 21 book, your Honor, tabs 3 and 4.  
 22 A. Yes. Those are the letters that  
 23 contain the items that were asterisked.  
 24 Q. You referred to asterisk, let's  
 25 make sure we are on the same page. Tab 3, the

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1 SUSAN HALL - DIRECT  
 2 first of those letters says "In connection with  
 3 the mediation session scheduled for July 13,  
 4 2005, these find enclosed a chart reflecting  
 5 amounts spent by Alcoa through May 2005 for  
 6 environmental liabilities. Some of the items on  
 7 the charts identified with an asterisk or double  
 8 asterisk have not been the subject of prior  
 9 notice pursuant to section 11.6 of the  
 10 Acquisition Agreement." Do you see that?  
 11 A. I do.  
 12 Q. When you said Mr. Lease admitted  
 13 failure of notice --  
 14 THE ARBITRATOR: Are you reading  
 15 from his letter?  
 16 MR. ZUROFSKY: Yes, I am, your  
 17 Honor.  
 18 THE ARBITRATOR: This is the  
 19 letter dated July 6, 2005?  
 20 MR. ZUROFSKY: Right. Same  
 21 language appears in the next one, too that is  
 22 the one I am looking at.  
 23 A. Yes. That is what I am referring  
 24 to. I would just add the qualification I think  
 25 there was some testimony by Mr. Lease in the

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1 SUSAN HALL - DIRECT  
 2 first arbitration hearing that he admitted there  
 3 were a couple of errors. And we did not include  
 4 those.  
 5 Q. Those items?  
 6 A. In the second category.  
 7 Q. Column 1B?  
 8 A. There were two items.  
 9 Q. So, I think you testified, there is  
 10 no overlap between 1A and 1B if an item is an  
 11 asterisked one and appeared at the chart in the  
 12 hearing you didn't count them both; right?  
 13 A. No. 1A and 1B represent Alcoa's  
 14 admissions either at the arbitration hearing or  
 15 in Mr. Lease's letters to Fairchild about items  
 16 for which no notice had been given. There is no  
 17 overlap.  
 18 Q. Let's talk about the second major  
 19 column?  
 20 THE ARBITRATOR: Let me just look  
 21 at the other letter here if I may. You're going  
 22 back to tab 2.  
 23 MR. ZUROFSKY: Yes.  
 24 THE ARBITRATOR: I am following it  
 25 in the book.

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1 SUSAN HALL - DIRECT  
 2 MR. ZUROFSKY: Tab 2. Same chart.  
 3 I was going to move, your Honor, if it is all  
 4 right with you, I was going to move to the  
 5 second column.  
 6 Q. Ms. Hall, the third column over,  
 7 second major heading Items For Which Alcoa  
 8 Ignored Fairchild's Attempt to Participate. Do  
 9 you see that, Ms. Hall?  
 10 A. I do.  
 11 Q. What is reflected in this column?  
 12 A. This column reflect items where  
 13 Fairchild made it clear that it wanted to  
 14 participate, that it wanted further information.  
 15 Those requests for further information,  
 16 consultation and opportunity to comment were  
 17 disregarded. By way of example included in this  
 18 column are what we have I think informally been  
 19 referring to as the four gap letters. With  
 20 respect to Fullerton, St. Cosme, Toulouse and  
 21 Torrence.  
 22 Also the Phase II reports which  
 23 Fairchild analyzed and asked that Alcoa provide  
 24 us with any -- let me take that back. Fairchild  
 25 asked to be included in any further

57 (Pages 2742 to 2745)

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1 SUSAN HALL - DIRECT

2 investigations that were going to be follow ons  
3 or follow ups to the Phase IIs.

4 Q. To the Phase IIs.

5 A. Correct.

6 Q. I think we have got your answer.

7 Let's break it down. The first thing you  
8 mentioned were four gap analysis letters?

9 A. Correct.

10 Q. Then you mentioned cost that were  
11 included as follow-up investigations to the  
12 Phase IIs?

13 A. Right.

14 Q. Take the first category you  
15 mentioned the four gap analysis letters are  
16 those just for purpose of the record, are those  
17 letters found at tab 7 with respect to  
18 Fullerton, that is the first one?

19 A. Yes.

20 THE ARBITRATOR: Let me just look  
21 at this.22 Q. Sorry if I didn't get an answer I  
23 was just checking something.24 THE ARBITRATOR: I am trying to  
25 look at the material you are referencing.

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1 SUSAN HALL - DIRECT

2 MR. ZUROFSKY: Sorry, I was just  
3 making sure --4 THE ARBITRATOR: You are referring  
5 to gap analysis. What is the gap?6 MR. ZUROFSKY: The reason I think  
7 that phrase is being used that is what Mr. Lease  
8 referred to were the letters for the four  
9 facilities that had charts attached to them.10 THE ARBITRATOR: What does that  
11 stand for, gap?12 MR. ZUROFSKY: We can look at Mr.  
13 Lease's testimony. I think he meant gaps in  
14 compliance. I don't think it was an acronym. I  
15 am sure Mr. Chesler will correct me if I'm  
16 wrong.17 THE ARBITRATOR: I have 7. Go  
18 ahead.

19 Q. Tab 7 with respect to Fullerton.

20 A. Yes.

21 Q. Then tab 10 with respect to  
22 Torrance.

23 A. That's right.

24 Q. These are all contained in Alcoa  
25 Arbitration Exhibit C volume 1 of 22. Then tab

1 SUSAN HALL - DIRECT

2 12 with respect to St. Cosme.

3 A. Yes, that's correct.

4 Q. Then tab 16 with respect to  
5 Toulouse?6 A. Yes. Those are the four what Mr.  
7 Lease referred to as the gap letters.8 Q. These came pretty early on, right,  
9 these are first half of 2003?10 A. Yes. March of 2003. Then June of  
11 2003.12 Q. What was Fairchild's response to  
13 these gap letters?14 A. I believe Mr. Miller responded to  
15 those letters asking for more information.  
16 Those letters essentially had estimated costs  
17 for doing various things. And Mr. Miller wrote  
18 to Alcoa and asked for additional information  
19 and justification of these costs.20 For example, I noted at Exhibit 12  
21 for St. Cosme, Alcoa is estimating that it  
22 expect in incur over \$5 million in costs for six  
23 categories of items. Two of which they don't  
24 even know what the costs are going to be. I  
25 wasn't there at the time, of course, but if I

1 SUSAN HALL - DIRECT

2 were Mr. Miller, you're talking about \$5 million  
3 out of an \$8 million reserve, I would have been  
4 somewhat stunned and want additional  
5 information. Which is what he asked for.6 Q. Let's look at an example of that in  
7 tab 8, stick with Fullerton just for ease. This  
8 is Claimant's 92. Do you see that there,  
9 Ms. Hall?

10 A. Yes.

11 Q. Tab 8 of your book.

12 A. Yes.

13 Q. The last paragraph on the first  
14 page "Nevertheless, pursuant to section 11.7 of  
15 the Acquisition Agreement we are willing to  
16 discuss this matter further with you in order  
17 that we may do so effectively, please provide us  
18 with specific and complete background  
19 documentation supporting the items and estimated  
20 costs summarized in the table. Such  
21 documentation should include copies of any  
22 assessments, reports, legal analyses, cost  
23 analyses prepared by or for Alcoa and any other  
24 documentation which support the various findings  
25 as listed in the tables included with your

58 (Pages 2746 to 2749)

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Page 2750

1 SUSAN HALL - DIRECT  
 2 letter." Do you see that?  
 3 A. I see that.  
 4 Q. Is that the request you are  
 5 referring to Mr. Miller made?  
 6 A. That is what I am referring to.  
 7 Additionally he says we will respond once we get  
 8 further information.  
 9 Q. How did Alcoa respond to that  
 10 request?  
 11 A. I believe that one of the Alcoa  
 12 attorneys, Mr. Harvey wrote to Fairchild in  
 13 August, a couple months later, indicating that  
 14 as additional documentation and support for  
 15 those costs became available that they would be  
 16 provided to for example. And that we would be  
 17 kept apprised of what was going on.  
 18 Q. Is that the document found at tab 9  
 19 of your book, Claimant's Exhibit 429?  
 20 A. That is the letter I was referring  
 21 to.  
 22 Q. If you look at the second page of  
 23 that document?  
 24 A. On the second page he says at the  
 25 penultimate paragraph, "We will provide

Page 2751

1 SUSAN HALL - DIRECT  
 2 Fairchild with further documentation to support  
 3 the estimates developed for the three  
 4 facilities. Documentation is being compiled for  
 5 each project and will consist of such items as  
 6 scopes of work, consultant proposals summary  
 7 reports and invoices. We will provide you with  
 8 this documentation in a timely manner once it is  
 9 complete for your review."  
 10 Q. To your knowledge, Ms. Hall, did  
 11 Fairchild ever receive the documentation such as  
 12 consultant proposals, scopes of work or whatnot  
 13 before Alcoa went ahead and spent the money?  
 14 A. I am not aware of any. I have not  
 15 seen any in my review of the file.  
 16 Q. But Alcoa has tried to claim  
 17 reimbursement for the projects contained in the  
 18 four charts in these gap analysis; is that  
 19 right?  
 20 A. Yes. That's right.  
 21 Q. Is that part of what is reflected  
 22 in the summary chart at tab 2 is the second  
 23 significant column?  
 24 A. That is exactly what is in column  
 25 2.

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1 SUSAN HALL - DIRECT  
 2 Q. Those items are in there?  
 3 A. Yes.  
 4 Q. What else is mentioned in that  
 5 column. You mentioned follow on to Phase II,  
 6 let's talk about that -- before we go there I  
 7 don't want to go through all these items. It is  
 8 worth a couple of examples.  
 9 If you look at the Fullerton, back  
 10 to sort of tab 7 you see the chart attached to  
 11 Mr. Lease's letter.  
 12 A. Yes.  
 13 Q. There are estimates on the  
 14 right-hand side?  
 15 A. Yes.  
 16 Q. Turn to the second page that first  
 17 item there is machine guarding. Do you see  
 18 that?  
 19 A. Yes. \$58,000 is estimated for  
 20 machine guarding.  
 21 Q. Based on your review of the file,  
 22 did Fairchild ever receive any more information  
 23 about machine guarding at Fullerton before  
 24 getting the bill?  
 25 A. No.

Page 2753

1 SUSAN HALL - DIRECT  
 2 Q. How much has Alcoa to date claimed  
 3 for machine guarding at Fullerton, if you want  
 4 we have included at tab 5 of your book the  
 5 letter that we have been dealing with, the  
 6 latest claims letter we have been working off of  
 7 the last couple days, if that is helpful to you?  
 8 A. I think machine guarding is at it  
 9 looks like it is item 42.  
 10 THE ARBITRATOR: What tab are we  
 11 in?  
 12 MR. ZUROFSKY: Tab 5, your Honor.  
 13 Q. Tab 2 of 6?  
 14 A. 2 of 6. It says item 42 machine  
 15 guarding compliance and it is adjusted total  
 16 through September is 1,032,289.  
 17 THE ARBITRATOR: What item?  
 18 THE WITNESS: Item 42.  
 19 Q. Ms. Hall, were you here during the  
 20 testimony of John Lease during the first week of  
 21 the hearing?  
 22 A. I was here for I think the bulk of  
 23 it.  
 24 Q. Were you here when we put in front  
 25 of Mr. Lease the assessment for machine guarding

59 (Pages 2750 to 2753)



Page 2754

1 SUSAN HALL - DIRECT  
 2 that was done at Fullerton with all the  
 3 individual pages?  
 4 A. I really don't recall.  
 5 Q. Let's look at another one. That is  
 6 at Fullerton. How about same site just for --  
 7 see fall protection there, line two above  
 8 machine guarding?  
 9 A. Yes.  
 10 Q. How much is the total cost on line  
 11 item 40, I guess it is?  
 12 A. The fall control program.  
 13 Q. Yes.  
 14 A. \$45,773 in the gap letter. And  
 15 what is the line, please?  
 16 Q. Line 40, I believe.  
 17 A. Line 40. \$151,658.  
 18 Q. Almost four times more; right?  
 19 A. Correct.  
 20 Q. Let's turn attention briefly to St.  
 21 Cosme.

22 THE ARBITRATOR: Where was the  
 23 other reference to the fall protection?

24 THE WITNESS: It is in Exhibit 5.

25 THE ARBITRATOR: Tab 5.

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1 SUSAN HALL - DIRECT  
 2 THE WITNESS: Tab 5, page 2 of 6.  
 3 THE ARBITRATOR: I have that. You  
 4 referred back to the estimate. Where is that?  
 5 MR. ZUROFSKY: Tab 7, your Honor.  
 6 On page, right below the machine guarding  
 7 estimate for 58,000 is the next one.  
 8 Q. Ms. Hall, we don't want to take up  
 9 the time today --  
 10 THE ARBITRATOR: I understand  
 11 that. You made reference to it so I would like  
 12 to see what you're referring to. You are  
 13 referring to fall protection.  
 14 MR. ZUROFSKY: Yes.  
 15 THE ARBITRATOR: That is the  
 16 second item on page 0041?  
 17 MR. ZUROFSKY: Yes, your Honor.  
 18 A. 45,000.  
 19 Q. All I was suggesting, Ms. Hall, I  
 20 was going to ask you a more general question.  
 21 In general as you have been able to compare them  
 22 up overstated estimates that are understating  
 23 what the eventual costs were?  
 24 A. Yes. There were a number of  
 25 discrepancies.

Page 2756

1 SUSAN HALL - DIRECT  
 2 Q. I think you pointed out for the St.  
 3 Cosme facility sort of skipping around just a  
 4 little bit, tab 14, the second page of tab 14,  
 5 similar chart; right, Ms. Hall?  
 6 A. Yes.  
 7 Q. You pointed out, I believe, for two  
 8 of the items, again machine guarding in this  
 9 case and fall control there is no estimate at  
 10 all?  
 11 A. Right.  
 12 Q. Do you know how much was spent on  
 13 those items at the St. Cosme facility?  
 14 A. Let's see, I'm looking at it. Fall  
 15 control compliance has a cost of \$37,857.  
 16 Q. How about machine guarding, I think  
 17 there is actually more than one reference to  
 18 machine guarding?  
 19 A. Machine guarding, well there is one  
 20 entry for 3300. But I know there is a larger  
 21 one than that.  
 22 Q. How about line 90.  
 23 A. Line 90. Yes line 90 machine  
 24 guarding, \$625,142.  
 25 Q. Again, I don't want to belabor the

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1 SUSAN HALL - DIRECT  
 2 point and go through all of them, just give some  
 3 examples.  
 4 You were talking before we went to  
 5 a couple of those examples, I think you were  
 6 about to discuss the other items in category 2  
 7 which I think you testified earlier follow on  
 8 investigations to Phase IIs?  
 9 A. Yes, that is what I said.  
 10 Q. What else is in -- why are those  
 11 items in category 2?  
 12 A. Well --  
 13 THE ARBITRATOR: When you say  
 14 category 2?  
 15 MR. ZUROFSKY: I am referring to  
 16 the broad category, third column over.  
 17 THE ARBITRATOR: Items for which  
 18 Alcoa ignored Fairchild's attempts?  
 19 MR. ZUROFSKY: Yes.  
 20 THE ARBITRATOR: They are not  
 21 numbered columns.  
 22 MR. ZUROFSKY: Right.  
 23 THE ARBITRATOR: Third column of  
 24 numbers.  
 25 MR. ZUROFSKY: Right.

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1 SUSAN HALL - DIRECT  
 2 A. Right. The other numbers in that  
 3 column represent follow on, follow-up  
 4 investigations that Alcoa did in the furtherance  
 5 of their Phase II reports. And Fairchild had  
 6 made a specific request of Mr. Ernesto Beckford,  
 7 had specifically requested two things. More  
 8 information about these Phase IIs. And,  
 9 secondly, that Fairchild's designated  
 10 representative be consulted with respect to any  
 11 further investigative activities.  
 12 Q. I believe -- let's take a look at  
 13 that letter. Is that the letter, Ms. Hall found  
 14 at tab 18 of your binder, Claimant's Exhibit 2,  
 15 co-Exhibit 2.  
 16 A. Yes.  
 17 Q. Tab 18.  
 18 A. That is the letter I was referring  
 19 to.  
 20 Q. Let me draw your attention to page  
 21 marked FC 299. Do you see that there?  
 22 A. Yes.  
 23 Q. Under 9A under Torrance facility on  
 24 that chart, do you see that?  
 25 A. Yes.

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1 SUSAN HALL - DIRECT  
 2 Q. It says at the end of those  
 3 comments, "The source of this impact is not  
 4 entirely clear Alcoa's assessment however it  
 5 presents an issue which should be followed up."  
 6 Do you see that, Ms. Hall?  
 7 A. With respect to Torrance, yes, that  
 8 is what it says.  
 9 Q. These were Fairchild's comments on  
 10 the Phase II reports that were provided to them  
 11 by Alcoa?  
 12 A. Yes. It's my understanding. I  
 13 wasn't there at the time. But that is my  
 14 understanding what this is about.  
 15 Q. If you look back to Mr. Beckford's  
 16 cover letter, he made reference to a request to  
 17 be consulted on follow up investigations.  
 18 A. That's exactly what he asks.  
 19 Q. Is that page FC 296?  
 20 A. Yes.  
 21 Q. Which part are you referring to?  
 22 A. He indicates that on the sites, I'm  
 23 quoting "As to those sites to which we agree  
 24 there should be further investigation, please  
 25 ensure that the actual investigative measures

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1 SUSAN HALL - DIRECT  
 2 are first discussed with our designated  
 3 representative (Michael Hodge) as required by  
 4 section 11.6C of the Acquisition Agreement."  
 5 Q. Irrespective of whether or not Mr.  
 6 Beckford had made that request, do you see the  
 7 reference there to as required by section 11.6C,  
 8 is it your understanding of the contract that  
 9 Alcoa would have, in any event, be required to  
 10 discuss with Fairchild before taking those  
 11 measures, even if Mr. Beckford hadn't made this  
 12 request?  
 13 A. That's my reading of the contract.  
 14 That Alcoa must discuss and confer and consult  
 15 with Fairchild on anything that might be or is a  
 16 Fasteners environmental liability.  
 17 Q. So did Alcoa consult and discuss  
 18 with Fairchild about the follow on  
 19 investigations of the Phase II before doing  
 20 them?  
 21 A. No, they did not. That's what the  
 22 second column represents. The costs that they  
 23 incurred for investigations for which Fairchild  
 24 was accorded no participation rights.  
 25 Q. Let's look at some examples. The

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1 SUSAN HALL - DIRECT  
 2 first is on tab 19 which is marked as Alcoa  
 3 arbitration C, volume 2 through 4 of 22.  
 4 A. I see that.  
 5 Q. This is the cover letter here.  
 6 There was also significant amount of reports  
 7 included with this, or as attachments to this,  
 8 right, Ms. Hall? Just looking at the first line.  
 9 A. When you are referring to the list  
 10 that is attached?  
 11 Q. No. We will get to the list in a  
 12 second. I am just looking at the first line  
 13 just to make a point.  
 14 A. Okay.  
 15 Q. "Enclosed for your information is  
 16 reports." In other words, what we have  
 17 excerpted here is just the cover letter not all  
 18 the reports that came with it?  
 19 A. Yes.  
 20 Q. Is this the next communication from  
 21 Alcoa to Fairchild regarding investigation at  
 22 the facilities?  
 23 A. Yes.  
 24 Q. It is dated almost a year after Mr.  
 25 Beckford's letter. Let me ask you a question:

61 (Pages 2758 to 2761)

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1 SUSAN HALL - DIRECT  
 2 Did you review this correspondence when it came  
 3 in, you were on board at this time?  
 4 A. Yes, I did.  
 5 Q. What did you understand this  
 6 correspondence to be representing?  
 7 A. Can I take minute to look at it?  
 8 Q. Sure. Of course?  
 9 A. This is essentially Alcoa advising  
 10 us of the results of their follow on  
 11 investigations that they had done.  
 12 Q. In other words, the investigations  
 13 were done at this point?  
 14 A. The investigations were done.  
 15 Q. That is why the reports were  
 16 attached they were done.  
 17 A. Right.  
 18 Q. You see where it says at the bottom  
 19 of that first page, second to last paragraph  
 20 "The costs" see that there?  
 21 A. Yes.  
 22 Q. "The costs that have been incurred  
 23 by Alcoa for remedial projects at the former  
 24 Fairchild Fasteners facilities in Los Angeles,  
 25 total \$1,073,208 through October 2004."

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1 SUSAN HALL - DIRECT  
 2 A. Yes, I see that.  
 3 THE ARBITRATOR: Where is that?  
 4 MR. ZUROFSKY: Sorry, your Honor.  
 5 Fourth paragraph down in the letter. The one  
 6 that begins "The costs that have been."  
 7 THE ARBITRATOR: Yes, I see it.  
 8 Q. Is that the same number, Ms. Hall,  
 9 if you turn two pages forward there is a chart,  
 10 a table attached to the letter?  
 11 A. Yes.  
 12 Q. Same number \$1,073,000?  
 13 A. Yes.  
 14 Q. That is how much Alcoa was claiming  
 15 is applicable under the Indemnification  
 16 Agreement in connection with this letter?  
 17 A. Yes, this sum I understand to  
 18 represent the costs associated with doing  
 19 follow-up, follow on work, characterization,  
 20 investigations emanating from Phase IIs.  
 21 Q. In response to Mr. Beckford's  
 22 letter we looked at minute ago, did Alcoa ever  
 23 say to you we are going to go forward with the  
 24 following investigations?  
 25 A. Not to my knowledge.

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1 SUSAN HALL - DIRECT  
 2 Q. None of the investigations listed  
 3 on this chart?  
 4 A. No. I have not seen any evidence  
 5 of that in the records.  
 6 Q. One of the items I want to points  
 7 you to, you see in that chart attach to the  
 8 letter, under the site Temple Avenue, City of  
 9 Industry?  
 10 A. Yes.  
 11 Q. There is some references including  
 12 one that is six down, to groundwater  
 13 remediation.  
 14 A. I see that.  
 15 Q. At the time of the acquisition --  
 16 THE ARBITRATOR: What page are you  
 17 on?  
 18 MR. ZUROFSKY: Sorry, your Honor.  
 19 Third page of tab 19 there is a chart.  
 20 THE ARBITRATOR: One page chart.  
 21 MR. ZUROFSKY: Yes. Table I, I  
 22 think is what it is.  
 23 THE ARBITRATOR: I have it.  
 24 Q. Under Temple Avenue, six entries  
 25 down it says "groundwater remediation."

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1 SUSAN HALL - DIRECT  
 2 A. I see that.  
 3 THE ARBITRATOR: Yes.  
 4 Q. Ms. Hall, at the time of the  
 5 acquisition is it your understanding that there  
 6 was in fact groundwater remediation had been  
 7 going on at the Temple Avenue facility?  
 8 A. That's my understanding from my  
 9 review of the records.  
 10 Q. We talked about, I think Mr. Wolff  
 11 testified about the pump and treat. Is that  
 12 what you're talking about?  
 13 A. Yes.  
 14 Q. Was this a continuation of work by  
 15 Alcoa that Fairchild had been doing during its  
 16 ownership of the facilities?  
 17 A. I wouldn't be able to answer that  
 18 question because I don't know what they did. We  
 19 didn't have -- we weren't given any  
 20 opportunities to participate in the course of  
 21 the pump and treat system after we sold the  
 22 project, after we sold the facility.  
 23 Q. I want to point your attention to  
 24 one item there, if you look two over it says  
 25 "expenditure to date." See that there?

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1 SUSAN HALL - DIRECT  
 2 A. Under which item?  
 3 Q. Sorry. Under groundwater  
 4 remediation. That same line we were looking at.  
 5 A. Uh-huh.  
 6 Q. Two columns over there is two  
 7 entries, 48,300-Mission, 82,000-EnviroSolve.  
 8 A. Exactly.  
 9 Q. Was EnviroSolve Fairchild's  
 10 consultant?  
 11 A. Yes. EnviroSolve was and in fact  
 12 still is Fairchild's consultants it was  
 13 Fairchild's consultant on Temple Avenue it still  
 14 is our consultant on other sites we have in  
 15 California.  
 16 Q. To your knowledge had Alcoa told  
 17 Fairchild EnviroSolve was going to continue to  
 18 be the consultant on Temple Avenue project?  
 19 A. I think I have seen something to  
 20 that effect.  
 21 Q. You see the other entry is  
 22 reference to Mission; do you see that?  
 23 A. Yes.  
 24 Q. Do you understand who this is?  
 25 A. I do now. Mission Geoscience was

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1 SUSAN HALL - DIRECT  
 2 apparently retained by Alcoa to replace  
 3 EnviroSolve.  
 4 Q. Had Alcoa provided to your  
 5 knowledge Fairchild with any advance notice of  
 6 that fact?  
 7 A. No.  
 8 Q. It is your understanding under the  
 9 agreement that is information that Alcoa needed  
 10 to communicate to Fairchild?  
 11 A. My reading of the contract says  
 12 that Alcoa's selection of environmental  
 13 consultant has to be reasonably acceptable to  
 14 Fairchild. But we were not told that they had  
 15 changed to Mission Geoscience, nor given an  
 16 opportunity to express our opinions on that.  
 17 Q. You responded to this letter,  
 18 right, this January 25 letter?  
 19 A. I am sure I did.  
 20 Q. Turn to tab 20 the next tab in your  
 21 book. I will ask you is this your response?  
 22 A. Yes, this is my response.  
 23 Q. Okay I want to spend some time  
 24 going over this response. I want to for now  
 25 point to one item. On the third page of this

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1 SUSAN HALL - DIRECT  
 2 response, this is Alcoa arbitration 103. Page  
 3 FC 341?  
 4 A. I'm there.  
 5 Q. Do you see that?  
 6 A. Yes.  
 7 Q. The third full paragraph, the one  
 8 beginning "similarly?"  
 9 A. I see that.  
 10 Q. I want to look four lines down.  
 11 A. The one beginning "The only  
 12 expenses?"  
 13 Q. Right. "The only expenses that  
 14 might have been legitimate Fastener  
 15 Environmental Liabilities are the groundwater  
 16 remediation costs associated with the Temple  
 17 Avenue facility." Do you see that?  
 18 A. I do.  
 19 Q. "By reference to table 1 attached  
 20 to your letter these remediation costs total  
 21 \$130,000." Do you see that Ms. Hall?  
 22 A. I do.  
 23 Q. Is the reference there to the fact  
 24 they might have been legitimate Fastener  
 25 Environmental Liabilities reference to the fact

Page 2769

1 SUSAN HALL - DIRECT  
 2 that Fairchild had been operating the pump and  
 3 treat system on groundwater remediation before  
 4 the acquisition?  
 5 A. Yes.  
 6 Q. You go on to say "However, since  
 7 Alcoa refused to honor its obligation to consult  
 8 under sections 11.6C provide prompt notice,  
 9 these expenses are challenged as well."  
 10 A. That is what it says.  
 11 Q. What are you referring to there  
 12 when you say Alcoa's refusal to honor its  
 13 obligation?  
 14 A. There is a pump and treat system  
 15 operating when the site was acquired by Alcoa.  
 16 They obviously changed consultants. You know  
 17 what arose out of the change of consultants, we  
 18 don't know whether they changed their approach  
 19 to the pump and treat. There was just no --  
 20 complete absence of information.  
 21 Q. If you go back to the chart that  
 22 you're referring to, table I in Mr. Lease's  
 23 letter, which is in the tab right before, the  
 24 first item there is remediation transition  
 25 management. Do you see that?

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1 SUSAN HALL - DIRECT  
 2 A. Yes.  
 3 Q. Did you know what that referred to?  
 4 A. Well, I don't know exactly. I can  
 5 guess. It probably means they transferred the  
 6 remedial action to Mission Geoscience. But all  
 7 I am looking at are these bare words, we were  
 8 not informed of anything other than what is on  
 9 this chart.  
 10 THE ARBITRATOR: That is what  
 11 happens you hire a new law firm, they read all  
 12 the letters of the old firm.  
 13 MR. ZUROFSKY: Like the dentist,  
 14 the guy tells you the guy before was terrible  
 15 and you have to redo it.  
 16 Q. Let's go back to your response.  
 17 You discuss some of the other facilities. On  
 18 page 3, still that page we were just looking at.  
 19 I had pointed your attention to the paragraph  
 20 about Temple Avenue, Ms. Hall.  
 21 A. Third full paragraph?  
 22 Q. Yes. FC 341.  
 23 A. Yes.  
 24 Q. We looked at the last sort of half  
 25 of that. I want to now move up to the top half

Page 2771

1 SUSAN HALL - DIRECT  
 2 of that in which you write "Similarly, the  
 3 Temple Avenue site was fully characterized prior  
 4 to closing and was undergoing remediation at the  
 5 time of sale."  
 6 What are you referring to there,  
 7 Ms. Hall?  
 8 A. I'm referring to the fact that  
 9 prior to Fairchild's acquisition of the site it  
 10 had been characterized by environmental  
 11 consultant and a pump and treat and soil vapor  
 12 extraction system were operational the site has  
 13 been assessed there is a remedy in place.  
 14 Q. You were responding to the claim  
 15 for indemnification for further investigation?  
 16 A. Correct.  
 17 Q. Let's talk about the Fullerton  
 18 facility, next paragraph down. It says  
 19 "Likewise, the Fullerton facility had been fully  
 20 characterized by June 2002."  
 21 What are you referring to there,  
 22 Ms. Hall?  
 23 A. Well, the Fullerton facility was  
 24 only acquired by Fairchild in 1999. It was  
 25 owned prior to that by an operation called

Page 2772

1 SUSAN HALL - DIRECT  
 2 Kaynar. Kaynar retained SCS Engineers. SCS  
 3 Engineers conducted a complete assessment of the  
 4 site, I think they issued something like four  
 5 reports.  
 6 They had prepared a remedial action  
 7 plan that had been submitted to the regulators.  
 8 And I believe it recommended, although I'd have  
 9 to look at the actual documents, I believe that  
 10 a soil vapor extraction system was recommended.  
 11 And that Mission Geoscience essentially redid  
 12 all that work. And its conclusions, based on my  
 13 statement here that nothing that was reported by  
 14 Mission Geoscience is fresh, I assume without  
 15 having it in front of me that they concluded the  
 16 same as had been previously concluded in the  
 17 prior assessments.  
 18 Q. You are aware, are you not, SCS did  
 19 not actually test the groundwater at Fullerton  
 20 during its investigations, does that sound right  
 21 to you?  
 22 A. I believe that's true, yes.  
 23 Q. Do you understand Mission  
 24 Geoscience did in fact test the groundwater?  
 25 A. Yes.

Page 2773

1 SUSAN HALL - DIRECT  
 2 Q. But why do you then say there is  
 3 nothing new or fresh or whatever it was you  
 4 referred to; do you recall?  
 5 A. Well, as I recall SCS had done very  
 6 extensive investigation of the soil. I think  
 7 they had done something like 125 or 26 soil  
 8 borings to find out the depth and extent of the  
 9 contamination.  
 10 They went down to approximately 80  
 11 feet below ground surface. And after 80 feet  
 12 there were no more hits. And the groundwater  
 13 level at that site is at approximately 130 feet  
 14 below ground surface.  
 15 They also did very extensive  
 16 modeling. They did very extensive conservative  
 17 modeling. So what they did, based on a worst  
 18 case scenario, in other words, contamination  
 19 directly into the ground, whereas in this site  
 20 you had asphalt and you had concrete floor, so  
 21 obviously that would make intrusions into the  
 22 ground less likely.  
 23 Taking all that away, they did this  
 24 modeling, this very conservative modeling that  
 25 the conclusion of which the VOCs that were in

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1 SUSAN HALL - DIRECT  
 2 the soil, the probability of their ever reaching  
 3 groundwater was extremely remote.  
 4 Q. That would be VOCs that were coming  
 5 from the soil below the plant?  
 6 A. That's correct.  
 7 Q. But Mission did find contamination  
 8 in the groundwater when they tested it at  
 9 Fullerton; correct?  
 10 A. I believe they did. If my memory  
 11 serves me, what they did, actually I would have  
 12 to see the report.  
 13 Q. Is Fullerton in an area that has  
 14 regional contamination, Ms. Hall?  
 15 A. Yes. There is a huge area of  
 16 contamination in Southern California in the LA  
 17 area. Mostly emanating around the San Gabriel  
 18 Valley water basin.  
 19 Q. So does that fact refresh your  
 20 recollection as to what Mission concluded with  
 21 respect to the groundwater?  
 22 A. I believe that Mission's ultimate  
 23 conclusion the contamination hits that were in  
 24 the groundwater were result of a regional  
 25 problem.

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1 SUSAN HALL - DIRECT  
 2 Q. Next item -- is that why you said  
 3 here it was fully characterized by June 2002?  
 4 A. Yes.  
 5 Q. Next item says "Finally the  
 6 Torrance facility." Okay?  
 7 A. Yes.  
 8 Q. I want to draw your eye to the last  
 9 line, last sentence of the paragraph, second to  
 10 last sentence "In any event."  
 11 A. Yes.  
 12 Q. "In any event, all of the  
 13 assessments for this site like all the other  
 14 assessments and characterizations -- "  
 15 THE ARBITRATOR: Which paragraph?  
 16 MR. ZUROFSKY: Sorry, "Finally the  
 17 Torrance facility," the last paragraph on that  
 18 page.  
 19 THE ARBITRATOR: Yes.  
 20 Q. About four lines down "In any event  
 21 all of the assessments for this site, like all  
 22 of the other assessments and characterizations  
 23 are not Fastener Environmental Liabilities."  
 24 Do you see that, Ms. Hall?  
 25 A. I do.

Page 2776

1 SUSAN HALL - DIRECT  
 2 Q. You write "Unless and until  
 3 Remedial Action commences there is no basis for  
 4 a claim under section 11.6." Do you see that?  
 5 A. Yes.  
 6 Q. You are using the defined term  
 7 Remedial Action?  
 8 A. Yes.  
 9 Q. The capitalized term?  
 10 A. Yes.  
 11 Q. You mean there to refer to the  
 12 defined term in the agreement?  
 13 A. Yes.  
 14 Q. Why do you say "unless and until  
 15 remedial action commences there is no basis for  
 16 a claim under section 11.6?"  
 17 A. Because that is what the contract  
 18 requires, if you have environmental  
 19 contamination at a site, there are no  
 20 indemnification obligations that arise until you  
 21 have got a Remedial Action. You need a  
 22 regulatory driver.  
 23 Q. Why do you say that these  
 24 assessments are not Remedial Actions as defined  
 25 term in the agreement, if you recall?

Page 2777

1 SUSAN HALL - DIRECT  
 2 A. Because they aren't being required  
 3 by regulators. They are being voluntarily  
 4 undertaken to assess the situation at the site.  
 5 Q. Two other items on this letter.  
 6 The next page at the top there you wrote "And  
 7 lastly, as you should know." Do you see that  
 8 there, Ms. Hall?  
 9 A. Yes.  
 10 Q. "Lastly as you should know section  
 11 11.6C requires Alcoa to consult with and provide  
 12 information to Fairchild with respect to  
 13 Fastener Environmental Liabilities. Section  
 14 11.6D requires prompt written notice of matters  
 15 which may give rise to indemnification  
 16 obligation."  
 17 THE ARBITRATOR: What paragraph  
 18 are you on?  
 19 MR. ZUROFSKY: Sorry, top of the  
 20 page Bates stamped FC 342, your Honor.  
 21 THE ARBITRATOR: All right.  
 22 Q. Right before the signature on this  
 23 letter. Then you write "No information was  
 24 imparted, no consultation was sought and no  
 25 prompt notice was given with respect to any of

65 (Pages 2774 to 2777,

Page 2778

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1 SUSAN HALL - DIRECT  
 2 the expenses incurred and actions undertaken at  
 3 Alcoa on the matters under review."  
 4 Do you see that, Ms. Hall?  
 5 A. Yes, I do.  
 6 Q. Is that response to the fact as we  
 7 saw in Mr. Lease's letter the work had been done  
 8 before the information had been sent to you?  
 9 A. That's right.  
 10 Q. Are the costs as you understand the  
 11 million dollars or so we saw in your chart is  
 12 that included in the category Alcoa ignored  
 13 Fairchild for attempts to participate?  
 14 A. That's right.  
 15 Q. Sticking with this letter, just one  
 16 more item on a separate item, on FC 340.  
 17 A. Yes.  
 18 Q. See at the bottom last paragraph  
 19 beginning in short.  
 20 A. Yes.  
 21 Q. You write there "In short, Alcoa  
 22 can commission all the environmental assessments  
 23 it wishes. Such assessments, be they  
 24 environmental, workplace health and safety or  
 25 OSHA, are not Fastener Environmental

1 SUSAN HALL - DIRECT  
 2 Fastener Environmental Condition that in any way  
 3 implicates an Environmental Law.  
 4 Q. Are you referring again to the  
 5 Remedial Action discussion we had just minute  
 6 ago as well?  
 7 A. Yes. In part.  
 8 Q. So, the letter we saw from Mr.  
 9 Lease that was at tab 19 respected the U.S.  
 10 California facilities; is that right, Ms. Hall?  
 11 A. The lease letter at 19 is Fullerton  
 12 and Torrance. The attachment has two others.  
 13 Q. Those are all in the United States?  
 14 A. Yes.  
 15 Q. Is it your understanding did Alcoa  
 16 also do follow-up investigations to the Phase  
 17 IIs at European facilities as well?  
 18 A. Yes, they did, I believe.  
 19 Q. Do you recall which facilities, we  
 20 don't have to do a whole laundry list.  
 21 A. Where they did follow-up to Phase  
 22 IIs?  
 23 Q. Yes.  
 24 A. I think they did follow-up to Phase  
 25 IIs at Montbrison, St. Cosme, Toulouse and maybe

Page 2779

Page 2781

1 SUSAN HALL - DIRECT  
 2 Liabilities." Do you see that?  
 3 A. I do.  
 4 Q. Then there is a footnote?  
 5 A. Yes.  
 6 Q. I want to talk about that footnote.  
 7 First for a second, do you recall Mr. Beckford's  
 8 letter that we looked at in which he, the  
 9 response to the Phase II investigations with the  
 10 chart?  
 11 A. Yes.  
 12 Q. Do you understand in that letter  
 13 Mr. Beckford indicated to Alcoa that certain  
 14 portions in his view the Phase IIs might be  
 15 subject to reimbursement under certain  
 16 situations?  
 17 A. That is what his letter said.  
 18 Q. Did you agree with Mr. Beckford's  
 19 position when you looked at the contract?  
 20 A. No, I did not.  
 21 Q. Why not?  
 22 A. Because I did not in my reading of  
 23 the contract, assessments, Phase II assessments  
 24 do not satisfy the definition of a Fastener  
 25 Environmental Liabilities because there is no

1 SUSAN HALL - DIRECT  
 2 Vougy. Did you say European or French.  
 3 Q. I said European. You just gave us  
 4 the French?  
 5 A. I think there were two in Germany I  
 6 can't pronounce.  
 7 Q. Kelkheim and Hildesheim. Is that  
 8 right? Does that sound right?  
 9 A. Yes. That sounds right.  
 10 Q. Let me ask it this way: Have you  
 11 seen anything or do you have any information to  
 12 suggest Alcoa, per Mr. Beckford's letter and his  
 13 request, consulted with Fairchild before  
 14 undertaking those investigations?  
 15 A. No, I have not seen anything that  
 16 would suggest that they consulted with us.  
 17 Q. Let's turn to tab 21 of your  
 18 binder. Look at some of these examples. Do you  
 19 see that there, Ms. Hall?  
 20 A. Yes.  
 21 Q. This is a letter to Mr. Beckford  
 22 from Mr. Lease, you had just become the  
 23 designated representative at this time; right?  
 24 A. Right around this time, yes.  
 25 Q. You read this when it came in?

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1 SUSAN HALL - DIRECT  
 2 A. Yes, I did.  
 3 Q. Here Mr. Lease is referring to  
 4 remedial investigations at the Montbrison  
 5 facility. Do you see that?  
 6 A. I do.  
 7 THE ARBITRATOR: What tab are you  
 8 on?  
 9 MR. ZUROFSKY: Tab 21, your Honor.  
 10 THE ARBITRATOR: Thank you.  
 11 Q. Ms. Hall, what is this letter? How  
 12 did you understand this letter when you read it?  
 13 A. Just give me minute to look at it.  
 14 This is Alcoa advising Fairchild it has  
 15 undertaken in follow-up to Phase II assessments  
 16 additional -- a simplified risk assessment and  
 17 they refer to a scope of work and estimated  
 18 proposal for a detailed risk assessment. A  
 19 letter from Alcoa to the French authorities and  
 20 invoices.  
 21 Q. Let's break that down. There are  
 22 invoices attached to this letter; correct?  
 23 A. They are not attached to this  
 24 exhibit.  
 25 Q. Not this exhibit.

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1 SUSAN HALL - DIRECT  
 2 A. I assume they were attached to the  
 3 original.  
 4 Q. Do you see reference there at the  
 5 bottom of the first page to cost incurred to  
 6 date at the Montbrison facility for this work  
 7 totaled \$208,000?  
 8 A. Yes.  
 9 Q. Did you understand when you  
 10 reviewed those documents those costs were  
 11 incurred related to both simplified risk  
 12 assessment that had been finished and work on  
 13 the detailed risk assessment?  
 14 THE ARBITRATOR: Work under?  
 15 MR. ZUROFSKY: Detailed risk  
 16 assessment. The second step.  
 17 A. I would assume but I don't know for  
 18 sure based on this letter.  
 19 Q. Let's look at your response, which  
 20 I believe is at tab 22, Claimant's 456.  
 21 A. Yes.  
 22 Q. See there on the second page at the  
 23 top, third line down "Your letter describes the  
 24 investigation as 'the ERM scope of work and cost  
 25 estimate proposal for carrying out the detailed

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1 SUSAN HALL - DIRECT  
 2 risk assessment study' on the face of it the  
 3 investigation is a cost and scope of work  
 4 proposal, the latter being the operative word.  
 5 Not so, on page 2 ERM states in two separate  
 6 places that the detailed risk assessment has  
 7 been conducted since April 2004."  
 8 Do you see that, Ms. Hall?  
 9 A. Yes, I do.  
 10 Q. Does that refresh your recollection  
 11 when you reviewed these documents the claims  
 12 that were submitted you understood the claims to  
 13 be submitted related to both simplified risk  
 14 assessment and work on the detailed risk  
 15 assessment?  
 16 A. Yes. I misunderstood your original  
 17 question.  
 18 Q. That's fine. Just to tie that up,  
 19 the chart at tab 5, remember this is sort of our  
 20 master claim chart, Montbrison is on page 4 of  
 21 6?  
 22 A. Which item?  
 23 Q. Sorry, tab 5, the December 19 chart  
 24 that has all the expenses. Do you see that  
 25 there?

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1 SUSAN HALL - DIRECT  
 2 A. What page?  
 3 Q. Page 4 of 6.  
 4 A. Yes.  
 5 Q. If you look on line 145 the  
 6 simplified risk assessment is listed as --  
 7 A. 15,735.  
 8 Q. If you go to the bottom the  
 9 detailed risk assessment.  
 10 A. 287,704.  
 11 Q. Coming back to tab 21, again I will  
 12 ask, is it your understanding this covers both  
 13 the simplified risk assessment and work on  
 14 detailed risk assessment, work on both those?  
 15 A. Yes.  
 16 Q. It says here, as we discussed, it  
 17 was a scope of work. Did you comment on the  
 18 scope of work that was provided in terms of  
 19 giving substantive technical comments on that  
 20 scope of work, Ms. Hall?  
 21 A. No, I did not.  
 22 Q. Why not?  
 23 A. Because my understanding is the  
 24 detailed risk assessment was already underway.  
 25 In fact given the timing here, was probably

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1 SUSAN HALL - DIRECT

2 almost complete, because I think my letter  
3 refers to the fact that -- I need to look at it  
4 at tab 22 -- that the detailed risk assessment  
5 had been conducted since April 2004.

6 Q. Did you understand Mr. Lease's  
7 letter to be a notice of proposed response  
8 asking you to comment?

9 A. No. He was not asking me to  
10 comment.

11 Q. What did you understand him to be  
12 saying?

13 A. I understood him to be saying that  
14 we've done this, this is a claim. Not that  
15 we're asking you for any input.

16 Q. The Toulouse facility which is at  
17 tab 23 of your binder, Claimant's 457. Again,  
18 Ms. Hall, we don't have to go through the whole  
19 back and forth on this, is this again another  
20 letter where Alcoa is asking for payment for  
21 work already done?

22 A. Yes.

23 Q. Was Fairchild to your knowledge  
24 consulted or notified that that work was going  
25 to be done before the costs were started to be

1 SUSAN HALL - DIRECT

2 those the expenses in the titled column Items  
3 For Which Alcoa Ignored Fairchild's Attempts to  
4 Participate?

5 A. Yes, those are the follow on  
6 investigations.

7 THE ARBITRATOR: Those in that  
8 column 3, those include remedial work as well as  
9 investigative costs, do they not?

10 MR. ZUROFSKY: I think, I will ask  
11 the witness, I think we discussed earlier the  
12 remedial work is the work at the City of  
13 Industry facility.

14 THE WITNESS: Right.

15 THE ARBITRATOR: What about St.  
16 Cosme?

17 MR. ZUROFSKY: I will ask the  
18 witness.

19 Q. Are you aware of any remedial work  
20 done at St. Cosme other than investigations,  
21 Ms. Hall?

22 A. No. The only remedial work of  
23 which I'm aware, let me say I'm aware at the  
24 time of that letter was the pump and treat  
25 system at Temple Avenue. I don't believe there

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1 SUSAN HALL - DIRECT

2 incurred?

3 A. I don't think so. But if you look  
4 at my letter.

5 Q. Which is 458, the next tab; is that  
6 right?

7 A. Yes.

8 Q. Let's go there.

9 A. I forgot what the question was.

10 Q. Let's go back. Did you understand  
11 Mr. Lease's letter to be a claim for work  
12 already either underway or completed?

13 A. Yes. Absolutely.

14 Q. How about at St. Cosme, tab 25  
15 which is Alcoa arbitration bulk C volume 6 of  
16 22. Same thing?

17 A. Work that's already completed or  
18 underway for which we had no opportunity to  
19 comment.

20 Q. Those are the French facilities you  
21 mentioned before; right?

22 A. St. Cosme, Toulouse, Montbrison.

23 Q. Are those the expenses that are in  
24 the category titled, in addition to the gap  
25 analysis expenses we talked about earlier, are

1 SUSAN HALL - DIRECT

2 remediation underway.

3 THE ARBITRATOR: At St. Cosme?

4 MR. ZUROFSKY: Perhaps I should  
5 clarify, your Honor, what the definition of  
6 remediation is. Why it is 5 million.

7 THE ARBITRATOR: It is 4.4  
8 million.

9 MR. ZUROFSKY: I think the term  
10 remediation is being used here to talk about  
11 cleaning up soil and things in the ground and in  
12 the groundwater.

13 THE ARBITRATOR: This includes the  
14 degreaser, it includes a lot of other things.

15 MR. ZUROFSKY: Includes all the  
16 other things on this gap analysis chart. This  
17 includes, as Ms. Hall testified, includes  
18 investigations there is only one remediation but  
19 also those gap analysis charts, the four charts  
20 we looked at because of the correspondence.

21 Q. Let's turn to the last column here,  
22 Ms. Hall.

23 A. Yes.

24 Q. You mentioned the work going on at  
25 the City of Industry facility. Is it your

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1 SUSAN HALL - DIRECT  
 2 understanding that following the January 25th  
 3 letter, the chart we saw from Mr. Lease's  
 4 letter, that Alcoa did further investigations at  
 5 the City of Industry facility?  
 6 A. Yes.  
 7 Q. If you turn to tab 28 which is  
 8 Claimant's 461, is this a letter with respect to  
 9 some of that work?  
 10 A. Yes.  
 11 Q. Perhaps I should have paused before  
 12 asking you about this letter. Just ask you  
 13 describe what is in that last category, what  
 14 type of items are in there?  
 15 A. The items in the last category  
 16 consist of incidents where Fairchild received a  
 17 bill or was not given any opportunity to  
 18 participate in what was going on. It was mostly  
 19 we were receiving after the fact notice of  
 20 efforts that had been undertaken or just a bill.  
 21 Q. So let's make sure we all  
 22 understand what is in each of these sort of  
 23 categories. The broad category 1 are items  
 24 listed on those charts we saw from Alcoa and  
 25 from Mr. Lease; right, that is items they

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1 SUSAN HALL - DIRECT  
 2 indicated they didn't give prior notice of;  
 3 right?  
 4 A. That is what the first two are.  
 5 Q. The category we were just looking  
 6 at is areas, I think you testified where there  
 7 was Fairchild sort of knew about possibilities,  
 8 asked for more information and didn't get it; is  
 9 that right?  
 10 A. Yes. The gap letters and Phase  
 11 IIs.  
 12 Q. You mean follow on, I think you  
 13 testified the follow ons and Phase IIs?  
 14 A. That is what I mean.  
 15 Q. The last one is the other stuff;  
 16 right?  
 17 A. Items where we were either given  
 18 after the fact notice or just got bills.  
 19 Q. Let's look at tab 28.  
 20 A. Okay.  
 21 Q. Claimant's 461. There is a  
 22 reference here to two work plans that describe  
 23 the scope of work; do you see that in the first  
 24 sentence?  
 25 A. Yes.

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1 SUSAN HALL - DIRECT  
 2 Q. If you look at tab 29, claim's 462,  
 3 this appears to be your response to this letter.  
 4 A. Yes it is.  
 5 Q. In responding to the letter did you  
 6 offer any -- first let me ask you this: What  
 7 was your response to Mr. Lease's submission of  
 8 the work plans for the further work at Temple  
 9 Avenue?  
 10 A. Give me minute just to look at  
 11 them. Okay?  
 12 Q. Of course.  
 13 A. My response to Mr. Lease's letter  
 14 about the work plans for City of Industry were  
 15 that they were not Fastener Environmental  
 16 Liabilities.  
 17 Q. That was one response. We can talk  
 18 about that.  
 19 A. Yes.  
 20 Q. Did you also respond if you look on  
 21 the second page that lastly section 11.6C  
 22 requires Alcoa to consult with and so on.  
 23 A. Yes.  
 24 Q. Is that another reason why you  
 25 thought those were inappropriate expenses?

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1 SUSAN HALL - DIRECT  
 2 A. Right. I pointed out once again  
 3 they failed to consult and provide us with  
 4 relevant information or to give us prompt  
 5 written notice of their proposed response to  
 6 potential liability.  
 7 Q. I guess the question is, these were  
 8 Mr. Lease was sending you work plans for scope  
 9 of work. Why is that, in this instance do you  
 10 say that that was not an opportunity to  
 11 participate?  
 12 A. Because these work plans had  
 13 already been provided to the regulators.  
 14 Q. Why is that a problem, why can't  
 15 you still comment on the work plans? Why  
 16 wouldn't you still comment?  
 17 A. Because the appropriate time to  
 18 comment on a work plan is when it is being  
 19 developed and before it is submitted to the  
 20 regulators. Once it is submitted to the  
 21 regulators your opportunity to comment is really  
 22 fairly useless because you're not going to go to  
 23 the regulators and contradict what Alcoa has  
 24 said. You lose all credibility with the  
 25 regulators if you do something like that. It is

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not the way things like this are handled.

There is supposed to be an implied good faith here that the parties are going to deal with each other and work together before a work plan is submitted to the regulators.

Q. Were you finished?

A. Yes.

Q. The last two sentences, the one beginning moreover. "Moreover, had we been --"

A. Sorry.

Q. In that same paragraph page FAIR 53314. "Moreover, had we been properly consulted in advance, we would have weighed in on the merits of Mission Geoscience's proposed work plans. Without belaboring the point these work plans are better characterized as 'the full employment for environmental consultants act'."

I always appreciate a good turn of phrase. What did you mean by that?

A. I don't have them in front of me, but I would have reviewed them and if I used that characterization, it was because they were very robust. They were doing things I think that had already been done. They were very,

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more items to touch on, then I think I'm done.

THE ARBITRATOR: My understanding you are hoping to finish with this witness today. We can go after 5, if necessary.

MR. ZUROFSKY: I am happy to go a little later if you are. I think it is a good idea to try to get done tomorrow.

THE ARBITRATOR: You have two witnesses tomorrow?

MR. ZUROFSKY: Although my guess they will probably take less time. I don't know. My guess they are a little bit narrower subject matter. We would like to finish Ms. Hall today if we can.

THE ARBITRATOR: You are still anticipating finishing all your witnesses tomorrow?

MR. ZUROFSKY: Absolutely. Hope so.

THE ARBITRATOR: You are still not anticipating redirect?

MR. CHESLER: Not so far. Your Honor. I assume you meant rebuttal.

THE ARBITRATOR: Yes.

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very broad.

I guess the best way to describe it they were doing more than was necessary.

Q. Were you familiar with -- maybe you weren't here, but are you familiar with Mr. Wolff's testimony in this case in which he discussed these work plans?

A. I wasn't here. But I understand that that's what he felt, too.

Q. So you agree with Mr. Wolff?

A. Well, he agreed with me.

Q. There you go. The costs of these items are included in the last category we were looking at?

A. That's correct.

Q. Next tab is tab 30. We're getting there. Tab 30.

THE ARBITRATOR: Maybe time now to recess?

MR. ZUROFSKY: Sure, your Honor.

THE ARBITRATOR: How are we progressing?

MR. ZUROFSKY: We are progressing, we are in the last column. We have a couple

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MR. CHESLER: Not so far.  
(Recess taken.)

Q. Ms. Hall, when we broke we were sort of making our way through the last category of items. We talked about work at the Temple Avenue facility where the work plans, I think you said had been submitted to the regulators, do you recall that before we broke?

A. Yes.

Q. I want to turn your attention to tab 30 in your binder. Which is Alcoa arbitration Exhibit bulk C volume 1 of 22. It is a letter dated -- it is originally written March 9, 2003, but I think the parties have all stipulated it is March 9, 2004 as the handwriting indicates there?

A. Right.

Q. Do you recognize this letter?

A. Yes, I obviously was not the recipients because I wasn't there at the time, but I reviewed this letter, yes.

Q. This purports to be at the top there City of Industry EHS non-compliance issues and accrued cost for corrective actions; do you

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1 SUSAN HALL - DIRECT  
 2 see that?  
 3 A. Yes.  
 4 Q. The reference to EHS is that a  
 5 reference -- this is not an environmental  
 6 remediation type of matter; is it, Ms. Hall?  
 7 A. No. It is workplace health and  
 8 safety.  
 9 Q. And EHS compliance is what it says;  
 10 correct?  
 11 A. Correct.  
 12 Q. So is this a request for Fairchild  
 13 to comment on proposed responses by Alcoa to  
 14 those situations?  
 15 A. No.  
 16 Q. What is it?  
 17 A. It is just a notice of potential  
 18 claim.  
 19 Q. Potential claim against the  
 20 indemnity?  
 21 A. Yes.  
 22 Q. If you look at the attachment there  
 23 is a bunch of invoices attached here; right?  
 24 A. Yes. There are.  
 25 Q. That is, if you turn into the

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1 SUSAN HALL - DIRECT  
 2 document, I am looking at the fifth page which  
 3 is Bates stamped FAIR 50000180 you see there it  
 4 says table 1, cost summary by project through  
 5 December 3, 2003 City of Industry. Then it has  
 6 a bunch of items. It totals \$120,000.  
 7 A. I see that.  
 8 Q. Did Alcoa consult with Fairchild  
 9 with respect to any of these items as you  
 10 understand it before these costs were incurred?  
 11 A. To my understanding they did not.  
 12 Q. Did you understand these projects  
 13 continued past the date of this letter, some of  
 14 them?  
 15 A. I believe they did.  
 16 Q. Did Alcoa consult with Fairchild  
 17 with respect to that?  
 18 A. No.  
 19 Q. I want to draw your attention to  
 20 some of the invoices, in particular. First off  
 21 at 183.  
 22 A. 183. I'm there.  
 23 Q. That is EnviroSolve. Do you see  
 24 that there?  
 25 A. Yes.

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1 SUSAN HALL - DIRECT  
 2 Q. Is this the document that refers to  
 3 what we talked about earlier about the work done  
 4 at the Temple Avenue pump and treat system?  
 5 A. It would appear that way based on  
 6 what this invoice says. It says groundwater  
 7 treatment unit. It looks like City of Industry.  
 8 So --  
 9 Q. When you referred earlier you  
 10 recall in your letter you said that the only --  
 11 the February 25 letter you said the only cost  
 12 that might have been Fastener Environmental  
 13 Liabilities were the groundwater remediation at  
 14 Temple Avenue. Do you recall that testimony a  
 15 little while ago?  
 16 A. Yes.  
 17 Q. But you said there was no notice of  
 18 consultation. You said you referred to the  
 19 switch to Mission; do you recall that testimony?  
 20 A. Yes, I do.  
 21 Q. This is work for EnviroSolve. So  
 22 why did you claim, why did you say there was no  
 23 notice for this work?  
 24 A. Well, because once Alcoa acquired  
 25 the Fasteners business, we were no longer in the

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1 SUSAN HALL - DIRECT  
 2 loop on these things. I mean we knew what was  
 3 underway when we owned the facilities, but after  
 4 that we did in the know the scope of the work or  
 5 what was being undertaken there.  
 6 Q. As you understand it, Ms. Hall, can  
 7 the amount of, if you will, water being pumped  
 8 in the pump and treat change, is it a static  
 9 quantity? Let me rephrase my question.  
 10 Can there be, can a pump and treat  
 11 system operate at different volumes?  
 12 A. Oh, absolutely. The volume you are  
 13 pumping, which is generally referred to as  
 14 gallons per minute, is very important.  
 15 Q. Do you understand that Mission in  
 16 fact increased the volume as I think there was  
 17 testimony about that yesterday, as time went on,  
 18 on Monday?  
 19 A. I think they did. I think this is  
 20 the site where they increased the volume to 175  
 21 gallons per minute.  
 22 Q. I said Mission, I meant Alcoa. I  
 23 didn't necessarily mean Mission itself. Someone  
 24 working for Alcoa.  
 25 Let's turn to the invoice that is

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located at Bates stamp page FAIR 50000199; do you see that?

A. I do.

Q. It appears to be an invoice from Premiere Safety.

A. It does.

Q. I want to turn your attention to the last paragraph there "These draft procedure for lock, tag and verify and confined space entry shipped, I think it says shipped for the SPAs at the COI up to review to ensure all OSHA and Alcoa compliance directives were met."

Do you see that?

A. I do.

Q. Do you understand that Alcoa has a certain set of internal standards or compliance directives?

MR. CHESLER: Your Honor, I object for lack of foundation to that. The witness wasn't even there at the time of the negotiations.

THE ARBITRATOR: If she knows, fine. If she doesn't know.

MR. ZUROFSKY: I am not sure what

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negotiations you are referring to.

Q. I asked do you know if Alcoa has a set of internal compliance directives related to environmental, health and safety matters?

A. Obviously I didn't in March 9 of 2004 because I wasn't there. But since I have been in the employ of Fairchild, I have seen this reference a number of times. So, yes, I understand based on the documents that I reviewed that Alcoa has a separate set of standards.

Q. If you look at the next invoice from Premiere Safety it is referenced there again. Do you see that?

A. On 199?

Q. 200. Excuse me. The next page. There are others is my point. I just wanted to ask you this question: In your understanding of the agreement, Ms. Hall, did Fairchild agree to indemnify Alcoa for work done to meet Alcoa's internal compliance directives?

A. That is certainly not what the agreement says.

Q. Turning to 31. Do you recognize

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this letter, Ms. Hall?

A. Yes, in fact I recognize this letter, I think this may have been the first letter that I addressed after coming on board at Fairchild.

Q. What is this letter, as you understand it, what is Alcoa asking for in this letter?

A. Well, Alcoa is notifying us that they have incurred actual costs in connection with machine guarding at eight --

Q. Eight?

A. -- at eight facilities.

Q. You understand this letter to be a request from Alcoa to consult or discuss proposed response?

A. No. This is not an effort to consult. This is an effort to tell us that they believe they have a claim.

Q. The number that is listed there, in the second, penultimate paragraph through September 2004 is 729 --

A. 729,114.

Q. Some of these facilities, for

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example, St. Cosme and Fullerton and Torrance were the subject of those gap analysis letters we looked at before; right?

A. That's correct.

Q. But were the others, were there any gap analysis letters provided before work commenced at any of the other facilities?

A. I don't believe there were any gap analyses for the Hungary site, the Simi Valley site, the Stoughton site and the Germany site. I think I'm right, but --

Q. We just looked -- well, strike it. Did you respond to this letter?

A. I am pretty sure I did.

Q. If you look at 32, was that your response?

A. Yes.

Q. It says there in the second sentence "Our response to Alcoa's claim for \$729,000 in reimbursable expenses for Fastener Environmental Liabilities are as follows."

The first paragraph there, I just want to draw your attention to the first line "First, Alcoa has failed to demonstrate that the

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1 SUSAN HALL - DIRECT  
 2 guarding requirements of OSHA section 1910.212  
 3 or state or foreign equivalents are Fastener  
 4 Environmental Liabilities as described in the  
 5 Acquisition Agreement." Do you see that,  
 6 Ms. Hall?  
 7 A. Yes.  
 8 Q. What are you referring to there,  
 9 what are you saying?  
 10 A. What I'm saying in order to have a  
 11 Fastener Environmental Liability, you must have  
 12 a loss that is based on applicable Environmental  
 13 Law in respect of a Fastener Environmental  
 14 Condition. If you look at the definition of  
 15 Environmental Law it does not, in my estimation,  
 16 include machine guarding.  
 17 Q. You said this is one of the first,  
 18 you might have said the first, but one of the  
 19 first letters that you responded to; right? When  
 20 you came on board.  
 21 A. Yes. I think it was the first one  
 22 or the second.  
 23 Q. In order to respond to this did you  
 24 look at the contract and definition of  
 25 Environmental Law that you just referenced?

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1 SUSAN HALL - DIRECT  
 2 A. Yes. I absolutely did.  
 3 Q. In reading it with respect to  
 4 machine guarding, what was your first reaction?  
 5 A. Well, when you say reading it with  
 6 respect to machine guarding, what I did is I  
 7 read it with respect to what a Fastener  
 8 Environmental Liability is. In order to  
 9 determine what a Fastener Environmental  
 10 Liability is you must also look at the  
 11 definitions of a Fastener Environmental  
 12 Condition and Environmental Law.  
 13 So I went through all those steps.  
 14 And when I got to a fastener Environmental Law  
 15 in my interpretation and estimation, machine  
 16 guarding does not, does not implicate a fastener  
 17 Environmental Law.  
 18 Q. Was that your first reaction when  
 19 you read this contract, Ms. Hall?  
 20 A. Yes. This is the first time I read  
 21 the contract and when I read the provisions on  
 22 fastener Environmental Law, I immediately had a  
 23 flash back to first year law school. It just  
 24 jumped out at me that the definition of fastener  
 25 Environmental Law had a very odd subsection to

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1 SUSAN HALL - DIRECT  
 2 it that was inconsistent with the overall scope  
 3 of that section.  
 4 That section was environmental  
 5 matters.  
 6 Q. Let's turn and look at that. If  
 7 you look on page 41.  
 8 A. Of what?  
 9 Q. Sorry. You're right. Tab 1. Page  
 10 41 of the agreement, it is Bates stamped FC  
 11 2727. Do you see that?  
 12 A. The definition of Environmental  
 13 Law?  
 14 Q. Yes.  
 15 A. Yes.  
 16 Q. You see there is an A, B and C?  
 17 A. Yes, I do.  
 18 Q. Do you read, I think at your  
 19 deposition Mr. Slifkin asked you a question  
 20 about this, he only asked you one question about  
 21 this. And you indicated that you read sort of B  
 22 and you might have said C, but B as a subset of  
 23 A. Do you recall that testimony?  
 24 A. Yes, I think that is what I said.  
 25 Q. What did you mean, you didn't

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1 SUSAN HALL - DIRECT  
 2 elaborate on that at your deposition, but what  
 3 did you mean?  
 4 A. Well, what I meant I said that B, I  
 5 think I said that B and C were subsets of A. I  
 6 am not entirely sure. But what I was trying to  
 7 convey is that A is extremely broad. And that B  
 8 and C are effectively subsumed within A.  
 9 For example, if you look at the  
 10 last few words in A, it refers to exposure to  
 11 hazardous materials.  
 12 Now if you look at C, it says  
 13 "exposure of persons or property to hazardous  
 14 materials."  
 15 Clearly that C is subsumed and in  
 16 fact the language is quite similar to A.  
 17 Given the overall emphasis of this  
 18 section as relating to, I have to go to the  
 19 caption of it, environmental matters, in my  
 20 judgement workplace health or safety was meant  
 21 to make sure that overlapping OSHA regulations  
 22 with EPA regulations that related to the  
 23 workplace were supposed to be within the,  
 24 embraced within this definition.  
 25 Q. Ms. Hall, are you aware as to

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whether or not there are OSHA or OSHA-like laws that deal with, let's call it pollution or hazardous material issues with specific regard to the workplace?

A. Yes. In fact there was a Memorandum of Understanding entered into with EPA and OSHA recognizing that there were certain overlaps with respect to environmental matters between the two agencies.

The Memorandum of Understanding was for the purpose of the two agencies trying to work together. For example, the EPA laws tend to be more stringent.

So, in my reading of this, I was -- it was my opinion and my construction that this definition was designed to make sure that it was clear that the overlap between EPA and OSHA regulations was going to be embraced within this section with respect to environmental matters.

The OSHA, my understanding and I am not an expert, regulates many things in the workplace in order to make a safe workplace. Some of which relate to environmental matters, such as air emissions, such as employees

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handling, you know, hazardous substances.

Q. Okay.

A. Items like that. When I read this I went back and I thought from first year law school. The first thing that occurred to me is ejusdem generis. I went and looked it up.

Q. French and Latin today.

A. Ejusdem generis, this is a legal maxim that had to do with interpretation of mostly statutes. Then in looking at that it led me to the further maximum of noscitur a sociis. I realized these words are basically informed by their companions and that when you look you can't just take these four words out of context, you have to consider them in the larger context in which they appear. That is my opinion.

Q. Thank you for that. Going back to 32 which is where we were, tab 32 when we started this discussion I just want to do one other item on this letter. We just talked about the first paragraph. When you said you didn't think the guarding requirements of OSHA qualify, that is the discussion we just had?

A. Uh-huh.

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Q. I want to look at the second paragraph now?

A. The one that starts "second?"

Q. Yes. The one that starts "second" about four lines down "nor did Alcoa." That sentence.

THE ARBITRATOR: Where are you?

MR. ZUROFSKY: Tab 32, is the machine guarding that we left to go to the agreement.

Q. See four lines down, Ms. Hall?

A. Yes, I do.

Q. "Nor did Alcoa report any non-compliance matters in connection with its preacquisition due diligence, which specifically included environmental health and safety surveys for each of the Fasteners facilities identified in your letter." Do you see that there?

A. I do.

Q. I think you testified at your deposition you actually later realized in fact those gap analysis we looked at earlier had come in earlier, do you recall that?

A. I did. At my deposition I wanted

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to make it clear that at some subsequent time I realized that this was inaccurate. At this point I was really still fairly new at Fairchild and getting acquainted with the file.

Upon further review I did see the four gap analysis letters. So I wanted to make that clear in my deposition that this was not entirely accurate.

Q. Having reviewed those gap analysis letters, does it change your view with respect to the appropriateness of the machine guarding claims by Alcoa?

A. No, it didn't. What I was making clear I was wrong we had never been given any notice that Alcoa thought there was a non-compliance. But the overarching theme here is machine guarding does not qualify as a Fastener Environmental Liabilities.

Q. One other item on this, you talk about your preacquisition due diligence. Are you familiar that there has been an argument made in this case or testimony in this case the Phase Is, I think Mr. Lease was talking about his view that Phase Is provided sufficient

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1 SUSAN HALL - DIRECT  
 2 notice of proposed responses and whatnot for  
 3 these facilities, do you recall that?  
 4 A. I am aware they have taken that  
 5 position.  
 6 Q. Have you reviewed the Phase Is for  
 7 facilities we are talking about here?  
 8 A. I think I looked at most of them.  
 9 I can't tell you exactly when.  
 10 Q. Having reviewed that do you agree  
 11 the Phase Is satisfy Alcoa's notice requirement  
 12 to give notice of proposed responses with  
 13 respect to conditions?  
 14 A. No. Because they don't give a  
 15 proposed response, they just give identification  
 16 of an area of possible concern.  
 17 Q. Do they also contain, as you  
 18 recall, general recommendations?  
 19 A. I don't recall. They may have or  
 20 they may not have. I just really don't recall.  
 21 Q. Turn to 33. I just want to make  
 22 sure we introduce the document. 33 is a similar  
 23 letter to 31. This one relates to lock, tag and  
 24 verify. Do you see that?  
 25 A. Yes.

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1 SUSAN HALL - DIRECT  
 2 Q. I think this one actually predates  
 3 the last one we looked at?  
 4 A. Yes. This was the first one I got.  
 5 Q. This is the first letter, a week  
 6 earlier; right?  
 7 A. Yes, this is the first letter I  
 8 got.  
 9 Q. Again, are your answers in respect  
 10 to what is going on with this letter the same as  
 11 what was going on with the machine guarding  
 12 letter, in terms of I asked you questions  
 13 whether or not this was Alcoa seeking to consult  
 14 and so on and so forth?  
 15 A. No, they were not seeking to  
 16 consult. They were seeking to tell us that they  
 17 had incurred expenses.  
 18 Q. If you turn to tab 34, which is  
 19 Claimant's 464, this is your response?  
 20 A. Yes, it is.  
 21 Q. The first line there similar to  
 22 what we talked about earlier on machine  
 23 guarding; right?  
 24 A. Yes.  
 25 Q. The second again you make the

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1 SUSAN HALL - DIRECT  
 2 reference to preacquisition due diligence. Is  
 3 the same answer about the gap analysis in Phase  
 4 I?  
 5 A. Same answer. At this point I was  
 6 just organizing my files. And I had not had an  
 7 opportunity to review everything. I had to  
 8 recall a lot of files from storage. So, I was  
 9 still getting oriented, which is why I wanted to  
 10 correct it at my deposition that I was in error  
 11 about their having not been earlier letters.  
 12 Q. If you look at the --  
 13 THE ARBITRATOR: Which tab are you  
 14 on now?  
 15 MR. ZUROFSKY: Sorry, on tab 34  
 16 still. This is Ms. Hall's response.  
 17 THE ARBITRATOR: Right.  
 18 Q. Second page of that, Ms. Hall, do  
 19 you see there at the top it says "Fourth" then  
 20 you list a number of items? Do you see that,  
 21 Ms. Hall?  
 22 A. Yes.  
 23 Q. I am looking at Roman iv,  
 24 implementing "Alcoa directives in French  
 25 operations?"

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1 SUSAN HALL - DIRECT  
 2 A. I see that.  
 3 Q. Was it your understanding in  
 4 connection with the claims that Fairchild --  
 5 sorry, Alcoa was making for these expenses they  
 6 were making claims for work done to comply with  
 7 Alcoa directives?  
 8 A. That's what I saw in their  
 9 documentation in support of their claims.  
 10 Q. Last topic. Torrance facility  
 11 you'll recall we looked at some time ago a  
 12 letter from Mr. Lease which had that table  
 13 attached to it that related to the California  
 14 facilities, do you recall that?  
 15 A. Yes.  
 16 Q. That letter also contained  
 17 information about the Torrance facility; did it  
 18 not?  
 19 A. Can you remind me where it is.  
 20 Q. Sure. Let's go back and look at it  
 21 again. It is at tab 19.  
 22 A. Okay.  
 23 Q. Second paragraph there. Actually  
 24 first paragraph says "With respect to the  
 25 Torrance facility" four lines down. Do you see

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1 SUSAN HALL - DIRECT

2 that? First paragraph four lines down with  
3 respect to the Torrance facility?

4 A. Yes.

5 Q. Do you see that, Ms. Hall?

6 A. I do.

7 Q. It goes on in the second paragraph,  
8 it says "In view of the concentrations  
9 identified in the site groundwater coupled with  
10 potential for off-site migration, Alcoa will  
11 contact the California Regional Water Quality  
12 Control Board." Do you see that?

13 A. I do.

14 Q. Was it your understanding when you  
15 reviewed this letter that Alcoa was going to go  
16 approach the Regional Water Quality Control  
17 Board?

18 A. Yes.

19 Q. We heard some testimony in this  
20 case about the different approaches of the  
21 Regional Water Quality Control Board versus the  
22 Department of Toxic Substances Control.

23 A. Yes.

24 Q. Are you familiar with those  
25 agencies in California?

1 SUSAN HALL - DIRECT

2 Q. It says there "The captioned report  
3 is enclosed for your review, this report present  
4 the findings from a California Department of  
5 Toxic Substances Control site visit that was  
6 conducted on January 13, 2006."

7 Do you see that, Ms. Hall?

8 A. I do.

9 Q. Is this the first communication  
10 that Fairchild got subsequent to Mr. Lease's  
11 January 2005 letter regarding contamination,  
12 remediation issues at the Torrance facility?

13 A. I believe it is.

14 Q. Is there any mention in here about  
15 negotiations or discussions regarding a Consent  
16 Agreement with the DTSC?17 A. No. The last information we had is  
18 that they were going to report to the regional  
19 board.20 Q. If you turn now to -- you notice  
21 the reference there it says that the visit was  
22 conducted on January 13, 2006. Do you see that?

23 A. Yes.

24 Q. Turn to tab 36 which is again Alcoa  
25 bulk Exhibit C, volume 7 of 22. Do you see

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1 SUSAN HALL - DIRECT

2 A. I am.

3 Q. You say it with some chagrin.

4 A. I have projects with both.

5 Q. Do you -- Mr. Wolff testified the  
6 other day, I believe, that he prefers, all  
7 things being equal, to be with the regional  
8 water board; do you agree with that?9 A. I agree with it based on my  
10 experience with them. And also on my  
11 environmental consultants out in California,  
12 EnviroSolve have the same opinion.13 Q. As of January 25, 2005 Mr. Lease  
14 had informed you they were going to approach the  
15 regional water board; right?

16 A. Right.

17 Q. That is what Fairchild knew?

18 A. Yes.

19 Q. Turn back, I know you wanted to  
20 look at that letter, we were really looking at  
21 tab 35?

22 A. Go to tab 35?

23 Q. Yes, please. What is the date of  
24 this letter, Ms. Hall?

25 A. February 22, 2006.

1 SUSAN HALL - DIRECT

2 that, Ms. Hall?

3 A. Exhibit 36?

4 Q. Yes. Tab 36.

5 A. Yes.

6 Q. What is the date of this letter?

7 A. March 2, 2006.

8 Q. Do you see there in the first  
9 paragraph it says "Please find enclosed a copy  
10 of a corrective action Consent Agreement" I will  
11 skip the docket number, "Effective February 21,  
12 2006 the date on which it was signed by the  
13 DTSC." Do you see that?

14 A. I certainly do.

15 Q. Is this the first time Fairchild  
16 heard about that Consent Agreement?

17 A. It is.

18 Q. Let's discuss for a second, what is  
19 a Consent Agreement?20 A. Consent Agreement is an agreement  
21 that is typically negotiated between a  
22 potentially responsible party and regulatory  
23 authority. It can be a local authority, it can  
24 be regional authority, state authority, it can  
25 be the U.S. EPA.

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The significance of it is, it is going to be your map, your floor plan for lack of a better word of what you are going to be required to do going forward to achieve certain goals.

Q. In his deposition Alcoa's consultant Mr. Hendrix referred to a Consent Agreement as the bible. Do you agree with that characterization?

A. I guess substantively I think I know what he was trying to convey. It is your map for what you are committed to going forward. It is a very important document.

Q. As you mentioned I think two answers ago, it is subject, the terms of which are subject to negotiation; is that right?

A. That is typically why it is called a Consent Agreement because the responsible party has an opportunity to deal with the regulatory authority. There is some give and take as opposed to the alternative can be the authority actually issuing an order compelling a party to do this, that or the other.

So it is always preferred to enter

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into a voluntary Consent Agreement with the regulators, rather than being compelled.

Q. The letter we looked at at tab 35, the one before was dated February 22. Do you recall that?

A. Yes.

Q. That is the day after, according to this letter that agreement was signed.

A. Yes. That is what it says.

Q. Would you have expected to get some information from Alcoa before the signing of the agreement about potential for Consent Agreement?

A. Well, I would have hoped to have been involved in the process of negotiating the Consent Agreement. Not that -- I recognize that Alcoa has the right to take the lead with remedial actions. But if everybody was playing by the rules of the agreement, Fairchild would have been given an opportunity to comment on how this Consent Agreement was going to be, what the framework would have been, how broad it was going to be. And, frankly, the first thing Fairchild would have tried to do is get out of the DTSC and back in front of the regional

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board.

Q. This is the last document I want to go through with you, Ms. Hall, tab 37 you see there the first line, this is a letter from you?

A. Yes.

Q. It says "We received your two letters of February 22 and March 2 regarding the Torrance facility."

A. Yes.

Q. You're responding to the two letters we just looked at; correct?

A. Correct.

Q. I want to turn your attention to the second page at the top there. It says "We note that the DTSC's January 13, 2006 Phase I report refers to a 'draft corrective action Consent Agreement' having been 'issued to the facility on September 19, 2005' no such draft Consent Agreement was ever provided to Fairchild, rather Alcoa unilaterally executed the corrective Consent Agreement with DTSC on February 14.

"No information was imparted to Fairchild, no consultation was sought, and no

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prompt notice was given with respect to any of these actions. Accordingly, any expenses incurred and actions undertaken by Alcoa leading up to, arising from and in furtherance of discharging the corrective action Consent Agreement, are Alcoa's exclusive responsibility." Do you see that, Ms. Hall?

A. I do.

Q. Why did you take that position?

A. I think it is pretty clear there that Alcoa unilaterally over a period of months entered into negotiations with the DTSC, the consequence of which was a corrective action Consent Agreement which in the final analysis obligated Alcoa to do certain things which we were going to pay the bill for.

Q. There have been actions that have followed that Consent Agreement that Alcoa is seeking reimbursement for, as you understand it?

A. With Torrance?

Q. Yes. Following this time frame?

A. I believe so.

Q. Those expenses are included in, are they included in that last category, just to

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1 SUSAN HALL - CROSS  
 2 finish up our map?  
 3 A. Yes. They are.  
 4 Q. If you look at the bottom right,  
 5 grand total here is what \$15,748,521?  
 6 A. Yes.  
 7 Q. Those are the items that fall into  
 8 each of the categories we just went over; right?  
 9 A. That's correct. That is in fact,  
 10 that is Alcoa's number.  
 11 Q. Let's do the math, is that the  
 12 amount Alcoa is claiming in this case less the  
 13 Phase IIs you talked about at the top?  
 14 A. Right.  
 15 MR. ZUROFSKY: I have not going  
 16 further. Thank you, Ms. Hall.  
 17 A. Thank you.  
 18 CROSS-EXAMINATION BY MR. CHESLER:  
 19 Q. Good afternoon, Ms. Hall.  
 20 A. Good afternoon, Mr. Chesler.  
 21 Q. As I think you just indicated, the  
 22 number on your chart is in fact the total amount  
 23 that Alcoa was seeking, except for the Phase  
 24 IIs; correct?  
 25 A. Yes, I believe that's correct.

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1 SUSAN HALL - CROSS  
 2 Q. So when Mr. Miller came in here  
 3 yesterday and testified even in fact paid some  
 4 of our claims under 11.6 he was wrong; wasn't  
 5 he?  
 6 A. No he wasn't wrong.  
 7 MR. ZUROFSKY: Objection that is  
 8 mischaracterizing Mr. Miller's testimony. It  
 9 will speak for itself, but I don't think that is  
 10 what he said.  
 11 Q. In fact you know that Fairchild has  
 12 not paid any of the 11.6A indemnification claims  
 13 which are the subject of this proceeding; isn't  
 14 that correct?  
 15 A. I think that is correct.  
 16 Q. Thank you. Before you got to the  
 17 company, you understand that Alcoa had hired  
 18 consultants and paid those consultants to  
 19 conduct Phase I studies?  
 20 A. Yes. That is my understanding.  
 21 Q. You understand that Alcoa is not  
 22 seeking reimbursement for the Phase I studies;  
 23 correct?  
 24 A. Correct.  
 25 Q. Subsequently Alcoa prepared scopes

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1 SUSAN HALL - CROSS  
 2 of work for Phase II studies, this is after the  
 3 closing of the transaction; correct?  
 4 A. That's my understanding. May I --  
 5 Q. Excuse me.  
 6 A. Just to be clear, my understanding  
 7 is that the transaction actually closed in  
 8 December of 2002. And I believe scopes of work  
 9 were provided to Mr. Hodge in November. I don't  
 10 know, that is probably just a technical point.  
 11 Q. It is, but I appreciate the  
 12 clarification.  
 13 Those were scopes of work for work  
 14 to be done later in Phase II investigations that  
 15 were going to follow the closing of the  
 16 transaction; correct?  
 17 A. That's my understanding.  
 18 Q. Then prior to any of the Phase II  
 19 work being done, Alcoa provided Fairchild with  
 20 revised scopes of work; correct?  
 21 A. I believe that's correct.  
 22 Q. To which Fairchild made no  
 23 comments, no substantive comments on the revised  
 24 scopes of work which were provided prior to the  
 25 Phase IIs being conducted; isn't that correct?

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1 SUSAN HALL - CROSS  
 2 A. I don't have anything in front of  
 3 me that suggests it is not correct.  
 4 Q. Then Alcoa conducted or its  
 5 consultants conducted the Phase II studies and  
 6 they provided the Phase II studies to Fairchild;  
 7 correct?  
 8 A. That's correct.  
 9 Q. Then before you got to the company  
 10 several folks at Fairchild, including Mr. Hodge  
 11 and Mr. Beckford, prepared a response to Alcoa  
 12 about the Phase II results and the work that was  
 13 proposed in those Phase II studies to be done;  
 14 correct?  
 15 A. That's correct.  
 16 Q. Both Mr. Beckford and Mr. Hodge  
 17 were at Fairchild at the time the agreement with  
 18 Alcoa to sell this business was negotiated,  
 19 drafted, signed and closed; correct?  
 20 A. That's correct.  
 21 Q. You weren't there?  
 22 A. I was not there.  
 23 Q. You were off practicing law  
 24 somewhere, you weren't working for Fairchild  
 25 either inside or outside; correct?

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1 SUSAN HALL - CROSS  
 2 A. Absolutely correct.  
 3 Q. These two folks, Beckford and Hodge  
 4 who were there prepared these responses to the  
 5 Phase II reports and among other things, they  
 6 indicated in a transmittal from Mr. Beckford a  
 7 number of items in their response for which they  
 8 put the letter Y indicating that there might in  
 9 fact be an indemnifiable claim related to  
 10 certain Phase II work; correct?  
 11 A. Not exactly correct. My  
 12 understanding is that Mr. Beckford put those Ys  
 13 there indicating further follow-up. And Mr.  
 14 Hodge's contribution to that chart consisted of  
 15 the analysis of the Phase IIs.  
 16 Q. Let's be precise. Mr. Beckford's  
 17 Ys didn't suggest, as you just said, further  
 18 work. It suggested and in fact said that those  
 19 items were items for which Alcoa might well have  
 20 indemnifiable claims relating to the work done  
 21 as part of the Phase II process; isn't that  
 22 true?  
 23 A. I'd have to look at his letter, but  
 24 whatever it says is what it says.  
 25 Q. Right. As you sit here today you

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1 SUSAN HALL - CROSS  
 2 don't have any reason to disagree with what I  
 3 just said; do you?  
 4 A. No. I just want to be precise.  
 5 Q. In the Phase II reports there were  
 6 described both general and specific risk  
 7 assessments that were recommended to be done by  
 8 Alcoa's consultants; isn't that true?  
 9 A. I would have to look at them. I  
 10 don't recall that they made certain -- I don't  
 11 recall that they made recommendations. I  
 12 believe that they highlighted areas of concern.  
 13 But I frankly don't recall. There were a lot of  
 14 them. I don't have them in front of me.  
 15 Q. Fair enough. The documents speak  
 16 for themselves, they are all in evidence. If  
 17 they in fact recommend both general and specific  
 18 risk assessments you wouldn't quarrel with that  
 19 would you?  
 20 A. I wouldn't quarrel with that. I'm  
 21 just saying it has been a while.  
 22 Q. So then you get hired, you come in  
 23 and you counterman the position Mr. Beckford  
 24 took when he listed all those Ys in his response  
 25 to the Phase II assessments that were provided

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1 SUSAN HALL - CROSS  
 2 to Fairchild and Alcoa; correct?  
 3 A. I disagreed with Mr. Beckford's  
 4 analysis of the contract, yes, I did.  
 5 Q. Beckford, Mr. Beckford is a lawyer,  
 6 you're a lawyer; correct?  
 7 A. Correct.  
 8 Q. Two lawyers working for the same  
 9 company at two different times disagree about  
 10 the meaning of this agreement; correct?  
 11 A. Actually three lawyers disagreed.  
 12 Q. Okay. Three lawyers, even better.  
 13 The lawyers with whom you disagreed were  
 14 actually at the company when this deal was  
 15 negotiated, signed and closed and you weren't;  
 16 correct?  
 17 A. That's correct.  
 18 Q. Now, the chart you spent most of  
 19 your direct-examination talking about, the chart  
 20 with all the numbers on it --  
 21 A. Yes.  
 22 Q. -- but for, I think you said maybe  
 23 one matter or two, for example, the work that  
 24 was being done at City of Industry pumping the  
 25 water, remember you said that was a remediation

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1 SUSAN HALL - CROSS  
 2 project?  
 3 A. Yes. The pump and treat.  
 4 Q. But for that virtually everything  
 5 on that chart falls into one of two categories,  
 6 doesn't it, it is either related to workplace  
 7 health and safety or it is some kind of an  
 8 assessment of potential environmental work to be  
 9 done or potential remediation to be done;  
 10 correct?  
 11 A. I think that's generally true, yes.  
 12 Q. Let's take those two categories.  
 13 Your position as you sit here today is that the  
 14 workplace health and safety claims that Alcoa  
 15 has submitted are not covered as a matter of  
 16 contract by the indemnification provision of the  
 17 agreement; isn't that right?  
 18 A. Yes, that's correct.  
 19 Q. So we could be sending you notices  
 20 every day saying here is a workplace health and  
 21 safety projects we want to do, here is a machine  
 22 we want to guard, here is a railing we want to  
 23 put up to prevent people from falling and  
 24 hurting themselves, your position is none of  
 25 that is covered, not because of notice problems,

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not because you didn't get to participate in the decision to put up a railing, but because the contract doesn't cover it in your view; isn't that true?

A. No. That is not correct.

Q. It is not correct?

A. No, I think I --

Q. You answered my question. It is not correct?

A. That's not correct.

Q. All right. Your position is if a workplace health and safety item falls under the description of Environmental Law in subpart A or C of 3.24G ii, then it is covered but only in that event; correct?

A. Could you repeat that.

Q. Yes. In order for a workplace health or safety claim to be covered under the indemnity in your view, it must be an environmentally related workplace health and safety claim; correct?

A. That's correct.

Q. And if it is not environmentally related, if it is a plain old workplace health

SUSAN HALL - CROSS

A. Yes, I do.

Q. It is to put some kind of mechanism, guard or shield around a machine to prevent the workers from being hurt, for example by having to put their hands into an area with moving parts?

A. That's my understanding.

Q. Tell me how preventing somebody from losing a finger by sticking their hand into the sharp spaces in a machine would ever be a "Environmental workplace health and safety" item?

A. I can't really sitting here today think of any instances where it would be.

Q. Nor can I. Let's take electricity control, one of the items we sought indemnification. Is modifications of to equipment to prevent people from being electrocuted or harmed from surges of electricity, do you understand that?

A. Do I understand what?

Q. That we made indemnification claims for management and control of electricity in connection with the operation of equipment.

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SUSAN HALL - CROSS

or safety claim like an OSHA claim, it is not covered; correct?

A. That's correct.

Q. You were here yesterday when I asked Mr. Miller to give me an example of how fall protection, protecting people against falling off of high places could be covered under the agreement. Do you remember that?

A. I do.

Q. His explanation was that if a solvent bubbled up out of the ground and formed a puddle and somebody slipped on the puddle and fell off of a high place then it was cover; right? Do you remember that?

A. That is what he said.

Q. That is what he said. I remember it very well. But if the same person fell off the same platform because there was no railing there, but there was no puddle of solvent that had somehow bubbled up from underground, then it is not covered; correct?

A. Correct.

Q. Let's take machine guarding, you understand what machine guarding is; don't you?

SUSAN HALL - CROSS

A. Yes.

Q. How can that be an environmentally related workplace health or safety claim?

A. I don't think it is.

Q. I take the same thing is true about mobile equipment rules to make sure people don't get run over by tractors and things, that can't be environmental; can it?

A. I can't really think of any instances where it would have an environmental nexus.

Q. How about lock tag procedures, you understand what that is, making sure a machine doesn't start up accidentally during maintenance and cut somebody's hand off?

A. Yes, I understand what that is.

Q. That can't be environmentally related workplace health and safety claim; can it?

A. Based on the claims Alcoa submitted for those items I do not see an environmental nexus.

Q. So we are now about 24 hours away from finishing this entire two-week proceeding.

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you correct me if I'm wrong, the only example in this entire record that is consistent with your view of what that contract language means is Mr. Miller's explanation of a puddle of solvent bubbling out of the ground and somebody slipping off a platform and hurting themselves, that is the only example of a workplace health or safety claim that ever been introduced to this judge as an example of what would be covered under the indemnification; isn't that true?

A. That is what Mr. Miller testified.

Q. He is the only one; isn't he?

A. Well I'm testifying today. And there are OSHA regulations that address environmental matters.

Q. Yes, but I just asked you, I have gone through every category of workplace health and safety we asked about, machine guarding, fall protection, mobile equipment, electrical safety, lock and tag out procedures, you haven't been able to give me a single example of how any of those could involve an environmental workplace health and safety claim and thereby get under your indemnification; have you? Not

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one?

A. No. Because those are not -- those do not satisfy the definition of Environmental Law. In my reading.

Q. Okay.

A. Frankly, if I might add --

Q. No. No. That is for redirect.

Let's go back to your summary chart. We have agreed but for maybe one remediation involving pumping water at City of Industry, everything else on that chart is workplace health and safety or assessments, studies or assessments?

A. Could you tell me which are you looking at that chart?

Q. Yes.

A. Which column?

Q. The whole thing. Now let's talk about assessments, investigations or assessments of possible work to be done to clean-up environmental problems. Your position, isn't it correct that your position is that, as you said in one of your letters, and as your counsel said he loves a good turn of phrase, I think your

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turn of phrase was something like you guys can continue to do assessments all you want, unless and until you do remediation we are not paying, it is not covered; isn't that right?

A. I rather look directly at my letters.

Q. Tab 20. Would you turn to tab 20, Ms. Hall. Would you turn to the second page of the letter. This is your letter; isn't it?

A. Yes, it is.

Q. We are looking at the page marked 340 in the bottom right.

A. Correct.

Q. Bottom of that page last paragraph that carries over you said "In short Alcoa can commission all the environmental assessments it wishes, such assessments be they environmental, workplace health and safety or OSHA are not Fastener Environmental Liabilities. The expenses associated with implementing a remedy based on those assessments might qualify. But not the assessments themselves. Unless and until there is a Fastener Environmental Condition there is no basis for

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indemnification."

You wrote those words; right?

A. I did indeed.

Q. You standby that position; right?

A. I do.

Q. So whether or not Alcoa gave you what you view as timely notice of an assessment, whether or not Alcoa permitted you, in your view, to participate in determining what that assessment would be or how it would be done, your position is, as you wrote in that letter, assessments are not covered; isn't that true?

A. I think I have to limit this to the items that I was addressing at this time this is February 25, 2005. There could be instances where an assessment or investigation was required by some sort of regulatory driver which would make a difference.

If you're doing an assessment or investigation or a study as a result of the regulators requiring that, that's a different story.

Q. We will come to a few of those. Because you refuse to pay those, too, we will

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come to those soon. Let me go back to what you said on February 25, 2005 you said Alcoa can commission all the environmental assessments it wishes, you didn't say with respect to only the ones you already done; did you, in fact your sentence says you can do whatever you want but I'm not paying for it. Doesn't it?

A. That's what it says, Fairchild is not paying for it.

Q. The fact is your 15 million and charge total on your summary chart but for one instance of what you call remediation is made up entirely either of workplace health and safety items which you say are not indemnified as a matter of contract and assessments which you say are not indemnified as a matter of contract; isn't that true?

A. I would say by and large that is probably correct.

Q. So the two hours we just spent listening to you tell your counsel and the judge about how we didn't give you timely notice, we didn't give you an opportunity to participate and all that explanation of the bad things my

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client has done in not complying with the contract has absolutely nothing to do with your position on why you're not going to pay for either of those two categories; isn't that so?

A. I don't think that is a correct statement. Because --

Q. You don't think it is a correct statement, fine.

THE ARBITRATOR: If it is an alternative ground, should I disagree with her assessment of language of the contract, I suppose that is another defense I would have to consider; isn't it?

MR. CHESLER: Sorry, your Honor, I am not sure I understood your question.

THE ARBITRATOR: If she is wrong on how she is interpreting the contract in those regards I still have to consider the question of, the second question she raised about notice. It is a separate ground. She has got alternative ground of defense. She may be wrong on both of them, but she has alternative ground.

MR. CHESLER: Absolutely, your Honor. I am simply trying to make clear to the

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court, I think I have, most of what we have heard today is on a ground that is, under her own interpretation of the contract, irrelevant. I agree with you there is a separate question of notice. Your Honor can read the contract as well as anybody.

THE ARBITRATOR: It is a complicated case, there are a lot of details, I am not critical of counsel. I think you have done a marvelous job pulling it together in the time you have, but there is a lot of detail here. No question.

MR. CHESLER: Absolutely. I agree. I think the point is made.

Q. We are going to talk about some of the notice in a little bit on your alternative ground with respect to your interpretation of 3.24 the definition of Environmental Law which you testified to on direct --

A. Correct.

Q. You would agree with me, I take it you're the one who came up with this interpretation of what workplace health and safety means under that paragraph; aren't you?

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A. I am not entirely sure what you mean. When I came on board I was the only one that had this interpretation; is that what you're suggesting or asking?

Q. Let me ask. When you came on board you read the contract. You came up with this interpretation of what it meant. You thought it was a subset of paragraph A, I think you said. You did that on your own, you didn't consult with anybody else at the company about that; did you?

A. Yes, I did.

Q. You did?

A. I did.

Q. Before you came up with the interpretation?

A. Well, I arrived at that interpretation. I then consulted with Donald Miller and Ernesto Beckford.

Q. That is my point. First you came up with the interpretation, is your testimony before you asked them what they thought it meant?

A. Yes.

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Q. You know that up until the time you got there, any submissions of claims for workplace health or safety expenses by my client to your company were not in fact rejected out of hand. The response was we need more information; right?

A. That's my review of the correspondence. That's correct.

Q. The words of the contract hadn't changed between the time Mr. Miller and Mr. Beckford were sending letters telling us to give them more information and the time you arrived, read the agreement and decided you understood what it meant; did it?

A. No.

Q. It was only after you got there that a letter came saying we are not paying for these workplace health and safety claims, not because of the information we have or don't have, not because of the notice or participation, but because they are not indemnified. You are the first person who ever said that to Alcoa; isn't that right, as far as you know?

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Q. I am not sure I now understand your testimony. You read the contract. You said what popped into your mind was the basic axiom you learned about interpreting contracts in your first year of law school. Based upon that reading, no parole evidence, nothing else, based upon your reading of the document you understand what the definition of Environmental Law was, in particular, that workplace health or safety was in fact subsumed within or included within subpart A of that section; isn't that your testimony?

A. That is my testimony, yes.

Q. Same contract was available to your predecessors who said it may be covered, we need more information; right?

A. Apparently.

Q. Thank you. Would you look at 3.24, I think tab 1 in your book.

A. Could you tell me the contract page.

Q. I will in a moment. If you give me a moment.

THE ARBITRATOR: 41, Environmental

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A. I also said there wasn't timely notice. I think in fairness you mischaracterized Fairchild's letters in response to Mr. Lease's gap letters.

Q. The letters say whatever they say.

A. They do.

Q. They are all in evidence.

A. They also say these may not qualify, please give us more information.

Q. May not?

A. May not.

Q. You concluded in one reading, first year law school training, they did not? You didn't have any qualification or doubt in your mind; did you? This was unambiguous to you; wasn't it?

A. No, it was not unambiguous. I think the judge has made the same conclusion. I looked at the definition of Environmental Law in the context of the entire section. To me those words had to be informed by the context in which they appeared. That's my reading. Reasonable minds can differ. I guess that is really why we are here today.

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Law.

Q. 41. The words, you pointed out before the words "exposure to hazardous materials" in A are similar to words in C. They are not the same. C says "exposure of persons or property to hazardous materials." But there are some common overlapping words. Remember you pointed that out earlier?

A. Yes.

Q. Do you see any common or overlapping words between A and B?

A. There is probably an "or" in both.

Q. Yes, but for the "or" is there any other overlapping word, do you see the "words workplace health or safety" in A?

A. No, I don't.

Q. Do you see that A ends with a comma, and then comes B, which ends with the word "or," then comes C?

A. Yes, I see that.

Q. When you were taking contract law in your first year of law school did you learn what the word "or" in a string of separated subclauses to a contract means?

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A. I believe I did.

Q. What did you learn it meant?

A. I believe it is disjunctive.

Q. Disjunctive, meaning it is not in one, but it is in the other, isn't that the definition of disjunctive?

A. Probably.

Q. Thank you. Did that pop into your head when you read this when you were thinking of your Latin axiom?

A. I don't remember whether I was focused on commas, I was focused on the overall substance and meaning of the whole section.

Q. I think we can save a little time on the next subject I was otherwise going to ask you about because I think Mr. Zurofsky covered it with you toward the end of direct-examination.

With respect to a variety of these workplace health or safety items that we sought indemnification for, lock tag, machine guarding, I guess those two in particular, when you wrote to us at some point saying you made these requests and you never sent a single letter

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correspondence the overarching reason which takes precedence in your mind over keeping you abreast of what we were doing is that you don't believe they were covered by the agreement; right?

A. That's correct.

Q. It is also the case, you spent a lot of time showing that between the time we gave you the gap -- not you, but gave Fairchild the gap analysis letters shortly after the closing, and the time we later submitted invoices on those same categories, the numbers had gone up, we spent more money; right?

A. Well, the gap analyses I believe had estimates.

Q. Right.

A. The actual invoices were actual invoices.

Q. Right. As you said there were discrepancies, perhaps a less pejorative term, the estimates were lower than the actual expense turned out to be; right?

A. That is a very fair characterization.

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giving us any notice or any kind of advance warning, you admitted now you hadn't gone back and looked at the prior correspondence. That was in error; correct?

A. I had looked at prior correspondence. But I had not looked at those four letters. That's correct.

Q. Now you have looked at those letters, the so-called gap analysis letters and while you admit the language of your letter was wrong, it hasn't changed your view they are not covered; correct?

A. That's correct.

Q. The reason again for that, you simply read the contract as not covering those items; right?

A. That and -- yes, I read it as not covering those items, but there were also the fact we were not kept -- we were not kept apprised of exactly what Alcoa was going to do with respect to those, their alleged non-compliances.

Q. You keep saying that, but you said on direct and also in some of your

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Q. Your view is as of the time the gap analyses were submitted with the lower estimates that turned out to actually cost more, those weren't covered items as of that time either; were they?

A. Mr. Chesler, I wasn't there when those gap letters came. So, I shouldn't be required to address those.

My position when I got the bills for machine guarding and the lock, tag and verify is set out in my letters. I did not read the contract as embracing those kind of claims. For the reasons we have already gone over.

Q. My question probably wasn't particularly well worded. I understand your point. Your view of the contract is what it is. You formed that view later because you got there later; right?

A. Right.

Q. The gap analyses letters were sent before any work had been done though; correct?

A. I believe that's correct. I'd have to look at them to be sure. If you are going to represent to me that's the case, I accept that.

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1 Q. A large component on the workplace  
2 health and safety side of the ledger as opposed  
3 to the contamination side if you will,  
4 remediation side, a large component of the  
5 workplace health and safety side of those  
6 requests was machine guarding; right?

7 A. I don't have them in front of me.  
8 Again, if that is what you're telling me it is,  
9 I agree, I don't dispute that.

10 Q. Were you here yesterday when Mr.  
11 Miller testified about machine guarding he  
12 said -- counsel this is transcript page 2362 --  
13 I asked, I guess I didn't, counsel for Fairchild  
14 asked on direct, 2361 "Alcoa did not ask for any  
15 more due diligence about machine guarding and  
16 those types of issues in connection with this  
17 transaction?"

18 Mr. Miller's answer at 2362,  
19 beginning at line 3 was "no, it" referring to  
20 machine guarding, "it is the kind of thing you  
21 could walk into the plant, look at the machines,  
22 count the machines and see instantly whether or  
23 not they had machine guards."

24 Were you here for that testimony?  
25

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1 due diligence and providing more information,  
2 because there is no foundation for my  
3 understanding that question.

4 I suppose that someone could walk  
5 into a facility and look at machines and  
6 determine whether there is machine guarding.  
7 But I am not sure how that relates to --

8 THE ARBITRATOR: I don't think Mr.  
9 Miller's answer was quite responsive to the  
10 question. It is a little bit confusing.

11 MR. CHESLER: I think that is a  
12 fair characterization, your Honor. Let me try  
13 it this way.

14 Q. Let's not quarrel, since it wasn't  
15 my question I have no pride of authorship.

16 A. It wasn't my answer, so I have none  
17 either.

18 Q. I understand, but unfortunately  
19 you're on the witness stand and I'm not. Let's  
20 try again.

21 Let's put aside whether the  
22 question and answer matched each other or what  
23 the meaning of the question was. Let me ask you  
24 again, do you have any reason to disagree with  
25

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1 A. I believe I was.

2 Q. You agree with that; don't you?

3 A. I actually didn't understand the  
4 question as you read it.

5 Q. Do you understand the answer?

6 A. Well, if you could read the  
7 question again.

8 Q. I'd be happy to.

9 A. I'd appreciate it.

10 Q. "Question: Alcoa did not ask for  
11 any more due diligence about machine guarding  
12 and those types of issues in connection with  
13 this transaction?" Meaning the purchase of the  
14 business.

15 "Answer: No. It" machine guarding,  
16 "is the kind of thing you could walk into the  
17 plant, look at the machines, count the machines  
18 and see instantly whether or not they had  
19 machine guards."

20 Do you agree with Mr. Miller's  
21 answer?

22 A. I don't disagree with Mr. Miller's  
23 answer, I still don't understand what the  
24 context of the question was in terms of their  
25

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1 Mr. Miller's sworn testimony that machine  
2 guarding "Is the kind of thing you could walk  
3 into the plant, look at the machines, count the  
4 machines and see instantly whether or not they  
5 had machine guards" do you agree with that?

6 A. I just feel like I can't answer it  
7 because I don't know what you would see if you  
8 went into a facility. I suppose you could  
9 determine whether, if you know where a machine  
10 is supposed to have a guard. I don't know that  
11 I would know that walking in.

12 So, I just don't feel I can answer  
13 that question. He answered it the way he did.  
14 I can't dispute or --

15 Q. Fine. You can't answer it. He  
16 answered it the way he did.

17 A. He answered it the way he did.

18 Q. You understand that under the same  
19 agreement provision which you talked about at  
20 some length on direct, Fairchild had among the  
21 rights which you for some reason didn't mention,  
22 the right to visit their former facilities; do  
23 you understand they had that right?

24 A. I understand the contract provides  
25

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1 Fairchild with reasonable access to the sites.

2 Q. And in fact they could question  
3 Alcoa's consultants about any of the work they  
4 were doing; right?

5 A. I think that is another one of the  
6 rights.

7 Q. They could go visit to the  
8 facilities, talk to the people there; right?

9 A. I think with Alcoa's permission,  
10 that's a right that's in the contract.

11 Q. So, I take it you don't know what  
12 happened before you got to the company, but  
13 since you have gotten there, are you aware of a  
14 single instance of where either you or someone  
15 else who had something to do with this  
16 transaction has ever asked Alcoa to allow any  
17 Fairchild personnel to visit a single one of  
18 these facilities, for example, to look at the  
19 machine guarding or lack thereof?

20 A. Not that I'm aware of.

21 Q. If Mr. Miller is right, that all  
22 you have to do is walk into the plants and in  
23 his words, instantly see whether or not they  
24 have machine guards, then all of this stuff  
25

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SUSAN HALL - CROSS

1 guarding now. One theory it is not covered.

2 The other theory is, as the judge pointed out,  
3 if he disagrees with your reading of the

4 agreement, he still has to consider whether for

5 example we gave you adequate notice and what if  
6 any effect that has on our rights to recover

7 depending upon what the judge determines about

8 the quality of our notice. You heard him say  
9 that; right?

10 A. I did.

11 Q. With all due respect, I am on the

12 alternative theory. Let's put aside your

13 contractual view which says it doesn't matter

14 how much notice you give me you are not getting

15 the money. Let's go to the alternative theory.

16 I am asking you a very simple

17 question. You admitted your company has the

18 right to reasonable access to these facilities

19 we bought from you; correct?

20 A. I agree.

21 Q. Mr. Miller says you can walk into a

22 plant, in his words, "instantly see whether

23 machines have guards, you can look at the

24 machines." That is what he said. Do you know  
25

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SUSAN HALL - CROSS

1 about giving you notice and telling you, your

2 alternative arguments, could have been cleared

3 up by just picking up the phone, calling Mr.

4 Lease and saying I want to come over and see the

5 machine guarding at the facility; couldn't it?

6 Yes or no?

7 A. I can't really answer that yes or  
8 no.

9 Q. You can't answer that question?

10 A. I can't answer it yes or no.

11 Q. All right. If you can't answer it

12 yes or no, I'll move on. Seemed to me to be

13 pretty simple, but if it is too complicated.

14 A. We have already been through the

15 fact in my opinion the contract does not cover

16 machine guarding and lock, tag and verify. So

17 walking into a facility to observe what the

18 situation is is of no moment.

19 Q. We are playing a little semantics

20 game, with all due respect, Ms. Hall. We think

21 it is covered, you think it is not. Right?

22 As the judge correctly pointed out

23 you come here today and provided under oath two

24 alternative theories, I am talking about machine  
25

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SUSAN HALL - CROSS

1 whether you can comment on that one way or the  
2 other; correct?

3 A. Correct.

4 Q. If he is right, and given the

5 facility access you had, this whole issue of

6 millions of dollars of machine guarding could

7 have been cleared up if you had picked up the

8 phone and said to Mr. -- to our people on our

9 side, any one of them, I want to come look at

10 the facilities and inspect the machines; yes or  
11 no?

12 A. No. Because by the time I'm on

13 board, Mr. Chesler, I am getting bills for

14 machine guarding.

15 Q. Fair point. How about before you

16 got on board -- excuse me, let me finish. When

17 we sent the gap letters which you and I think

18 just agreed were before any machine guards were

19 put on any machines, we sent gap analysis

20 letters saying we want to do machine guarding.

21 Contract still said at that time your company

22 had a right to reasonable access to the

23 facilities; correct?

24 A. It did. It does.  
25

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1 SUSAN HALL - CROSS  
 2 Q. Yes or no, could Mr. Miller or Mr.  
 3 Hodge or Mr. Beckford, any of the folks who  
 4 preceded you, as far as you know could they have  
 5 exercised Fairchild's right to reasonable  
 6 access, just called up Mr. Lease and said I want  
 7 to go visit any of the facilities and seen for  
 8 themselves what was on the machines, what wasn't  
 9 and that's all they needed to see, yes or no?  
 10 A. Yes.  
 11 Q. Thank you.  
 12 A. And if they had perhaps they would  
 13 have exercised that right if their request for  
 14 additional information had been provided. But  
 15 it wasn't.  
 16 Q. They needed additional information  
 17 to pick up the phone and say let me go down the  
 18 road to Fullerton and see what's there --  
 19 withdrawn.  
 20 THE ARBITRATOR: Is there more  
 21 than one way to put a guard on a machine? I  
 22 don't know much about machine guarding.  
 23 MR. CHESLER: Your Honor, I always  
 24 tell my client I know almost nothing about  
 25 everything. That falls into the category of

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1 SUSAN HALL - CROSS  
 2 almost nothing about that topic. I just don't  
 3 know.  
 4 What I do know what Mr. Miller came  
 5 and testified to under oath. He seemed to be  
 6 confident of his position about most things.  
 7 Q. Let's talk about Fullerton. You  
 8 were asked some questions about Fullerton.  
 9 A. Yes.  
 10 Q. On April 5 of 2005, that is after  
 11 you got to the company; correct?  
 12 A. Correct.  
 13 Q. Mr. Lease sent a letter about  
 14 proposed scope of work for some soil and  
 15 groundwater sampling at Fullerton; correct?  
 16 A. If you could tell me where the  
 17 letter is, I would appreciate it.  
 18 Q. Let me show you Alcoa Exhibit 59.  
 19 Do you recognize this as a letter  
 20 to you from Mr. Lease dated April 5, 2005?  
 21 A. Yes, I do.  
 22 Q. You recognize it refers to a work  
 23 plan that describes a proposed scope of work for  
 24 supplemental soil and groundwater sampling at  
 25 the Fullerton site?

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1 SUSAN HALL - CROSS  
 2 A. That's correct.  
 3 Q. He says it addresses the California  
 4 Regional Water Quality Control Board's request  
 5 for additional monitoring wells at the site.  
 6 A. That is what it says.  
 7 Q. At the bottom it says "If you have  
 8 any questions or comments on the information in  
 9 this letter or the attachments please call me."  
 10 He gives you his telephone number; correct?  
 11 A. That is what he says.  
 12 Q. You were also given a draft letter  
 13 attached to this letter from Mission Geoscience  
 14 who were Alcoa's consultants to the California  
 15 Regional Water Quality Control Board; correct?  
 16 A. Yes.  
 17 Q. You didn't call, take Mr. Lease up  
 18 on his offer to call if you had any questions or  
 19 comments, you didn't call him; did you?  
 20 A. No. I didn't call him. I think I  
 21 responded in writing.  
 22 Q. Yes. We will get to that. You  
 23 didn't call him back and talk to him, say, John,  
 24 let me talk to you about this, when did these  
 25 regulators show up, why are they demanding this

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1 SUSAN HALL - CROSS  
 2 additional supplemental work?  
 3 A. No, I didn't.  
 4 Q. You did write back. Let me show  
 5 you Alcoa Exhibit 173. Is this your response?  
 6 A. Yes, it is.  
 7 Q. You say "We received your letters,  
 8 we reviewed the work plan" then the next  
 9 paragraph where you get down to the business of  
 10 the letter you say "Our position on Alcoa's  
 11 voluntarily undertaking risk assessments,  
 12 investigations and characterizations with  
 13 respect to the Fullerton facility was conveyed  
 14 to you" and you refer back to the February 25  
 15 letter we looked at a few moments ago; right?  
 16 A. That's what it says.  
 17 Q. You go on to say, in fact you quote  
 18 there Alcoa -- looking at last sentence of your  
 19 quote from your earlier letter "Alcoa can  
 20 continue to undertake site assessments and  
 21 characterizations" talking about future work;  
 22 right, "but until remedial action is undertaken  
 23 there is no Fastener Environmental Liabilities  
 24 that qualifies for indemnification under 11.6."  
 25 Right?

87 (Pages 2862 to 2865.)

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SUSAN HALL - CROSS

A. Yes.

Q. You understand that that is not consistent with Judge Stapleton's preliminary opinion on summary judgement motion here?

A. I don't know what you're talking about.

Q. Then I won't ask you about it.

You say "Inasmuch as the work plan --"

A. Where are we now?

Q. At the bottom of the first page "Inasmuch as the work plan for supplemental subsurface investigation is simply another assessment of the site we reject all claims for indemnification for the costs relating to the plan, its implementation and any associated expenses." Right?

A. Yes.

Q. If you're wrong, if your reading of the indemnification is incorrect and in fact investigations or studies to determine whether environmental remediation work needs to be done are covered, then your refusal to pay for this particular study was an error; wouldn't you

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SUSAN HALL - CROSS

Condition and Buyer shall not unreasonably refuse to incorporate the Seller's comments."

Now I recognize in this section that Alcoa has the right to take the lead on remedial actions.

Q. It doesn't say take the lead; does it?

A. I'd have to look at the language.

Q. Yes. Why don't you look at the language. It says "conduct and control all remedial action and negotiations with any government entity," etc., etc. toward the top of section C. Isn't that what it says?

A. Right. That is what it says.

Q. Now, your testimony is notwithstanding my client's contractual rights to conduct and control all remedial action and negotiations with any government entity, that the language at the end of that same paragraph that you read about a reasonable opportunity to comment, in your view means that if we have given a proposed work plan to a regulator at their request, no work's been done, we submit it to you with a letter saying call with any

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SUSAN HALL - CROSS

agree with that?

A. If all your predicates are true, it may be in error.

Let me add, I just realized something. Again, I think as with so many of these items, you do have the notice issue here. I believe that the work plan had already been submitted to the regulators. And we had no opportunity to participate in that.

Q. I am glad you added that little qualification. Would you go to the contract, tab 1 to 11.6 which begins on page 82.

A. I'm there.

Q. Where does it say in 11.6, where is the actual language that says before Alcoa submits a proposed work plan to any regulator, Fairchild must be given a copy and the opportunity to change it, comment, modify it?

A. Well, it doesn't have those exact words, but if you look at, page 83 which is the final sentence in connection with 11.6C, it says. "The Buyer shall afford the Sellers a reasonable opportunity to comment on the Buyer's proposed response to a Fastener Environmental

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SUSAN HALL - CROSS

questions or comments, that you've not been given any reasonable opportunity because the regulators have gotten a draft of the plan on which not a thing has been done yet? That's your testimony, right?

A. My testimony is --

Q. Is that your testimony?

A. That Alcoa has an obligation to consult with us on proposed responses to environmental conditions. A work plan is a proposed response. And before it is submitted to a regulator, Alcoa should consult with Fairchild and get its comments.

Q. That is just your view of it; right? You are not sitting here testifying under oath that you know that Alcoa had no right to make any suggested modifications or have any further discussion with the regulators about the proposed plan? You are not suggesting you know that; are you?

A. I am not suggesting that. I'm suggesting nothing of the kind. I'm suggesting that the contract provides Fairchild with certain participation rights. And that when

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1 SUSAN HALL - CROSS  
 2 you're dealing with remediation at these sites,  
 3 which can be very, very costly, and the parties  
 4 are supposed to consult and confer and comments  
 5 are supposed to be listened to from Fairchild,  
 6 that Alcoa shouldn't in good faith go and submit  
 7 work plans to the regulators about what they are  
 8 going to do without giving Fairchild an  
 9 opportunity to be heard on it. That's all I'm  
 10 saying.

11 Q. Let me ask my question again.

12 A. Sure.

13 Q. You are not testifying you know as  
 14 a matter of fact that Fairchild did not have an  
 15 opportunity to comment on this work plan, merely  
 16 because Alcoa had given a draft of it to the  
 17 regulators; are you?

18 A. No. But what I'm telling you --

19 Q. You answered my question. You  
 20 already told me what you wanted to tell me.

21 By the way, my questions earlier  
 22 about being able to walk into the plants by  
 23 calling John Lease to see what the machine  
 24 guarding situation is, that would apply equally  
 25 to fall protection, wouldn't you, if you called

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1 SUSAN HALL - CROSS  
 2 John Lease and said I want to go over and look  
 3 at the Torrance facility, you walk through the  
 4 facility, you could see whether there is a  
 5 railing up on a platform or not; couldn't you?

6 A. Maybe yes, maybe no.

7 Q. Presumably you could walk through  
 8 the plant and see what has been put up to  
 9 protect against falls or what hasn't been  
 10 couldn't you?

11 A. Perhaps. I think you have to know  
 12 something about what fall protection involves.  
 13 I guess if you have an area where employees are  
 14 up on a highly elevated platform and there is no  
 15 railing.

16 Q. You can see that?

17 A. You can probably see that, yes.

18 Q. By the way, you have to know  
 19 something about it, were you here yesterday -- I  
 20 think it was yesterday -- losing track of days,  
 21 when Mr. Hodge said he was being paid \$200 an  
 22 hour to come from his teaching job in Virginia  
 23 to testify here?

24 A. I was here for his testimony on  
 25 that.

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1 SUSAN HALL - CROSS  
 2 Q. Presumably this was a long  
 3 experienced environmental lawyer, if the company  
 4 was prepared to pay him \$200 an hour to take off  
 5 some time from teaching to testify, you don't  
 6 have any reason to doubt they could have paid  
 7 him 200 bucks an hour to go over to the  
 8 facilities, walk around with his years of  
 9 expertise, and tell them whether fall protection  
 10 provisions were, in his view, adequate or not;  
 11 do you?

12 A. I think Mr. Hodge testified he is  
 13 not an expert in OSHA compliance. We could have  
 14 paid him for that, but it would have been a  
 15 waste of money.

16 Q. You could have found somebody and  
 17 paid him or her for that for whom it wouldn't be  
 18 a waste of money; couldn't you?

19 A. Sure. If those were Fastener  
 20 Environmental Liabilities. But they are not.

21 Q. We are on the alternative theory  
 22 again, Ms. Hall.

23 A. Sorry.

24 Q. You keep forgetting that. When a  
 25 judge asks the question at trial, as a trial

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1 SUSAN HALL - CROSS  
 2 lawyer I learned long ago you better darn well  
 3 try your best to respond to the question.  
 4 THE ARBITRATOR: You are doing  
 5 very well.

6 MR. CHESLER: Thank you, your  
 7 Honor. I will tell my wife you said that. She  
 8 will be proud of me.

9 Q. Let's talk about Montbrison for  
 10 minute. You received a request in February  
 11 2005, I think we looked at it maybe, on the same  
 12 day you sent your letter saying we are not  
 13 paying for any assessments.

14 A. We are not paying for any what?

15 Q. Any assessments.

16 A. At Montbrison?

17 Q. No. No. You sent the general  
 18 letter saying assessments are not covered. We  
 19 looked at that letter.

20 A. Yes. My February 25 letter.

21 Q. On the very same day Alcoa sent a  
 22 letter asking for indemnification for what was  
 23 called a detailed risk assessment at Montbrison  
 24 about soil and groundwater issues. Do you  
 25 recall that?

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1 SUSAN HALL - CROSS

2 A. Yes.

3 Q. You rejected that claim, do you  
4 recall that?5 A. Could you tell me where it is in  
6 the book.

7 Q. Yes, it is Exhibit 174.

8 MR. ZUROFSKY: Tab 22.

9 MR. CHESLER: Thank you, counsel.

10 Q. Why don't you turn to tab 22 in  
11 your direct exam book your counsel kindly  
12 pointed out.

13 A. Okay.

14 Q. This is your response I want to ask  
15 you if you recall you sent this letter rejecting  
16 the request for indemnification for the detailed  
17 risk assessment relating to soil and groundwater  
18 at Montbrison?

19 A. Yes.

20 Q. And you said in this letter that  
21 Alcoa had been previously informed, I am looking  
22 now bottom of the first page.

23 A. Yes.

24 Q. "Furthermore Alcoa has been  
25 previously informed that Fairchild reject claims

1 SUSAN HALL - CROSS

2 Q. I will represent to you that's the  
3 case.4 Before you rejected this letter,  
5 this request, I should say, did you consult with  
6 any of the people who had been at Fairchild who  
7 were still there at the corporate level when the  
8 Fasteners facility business were owned to find  
9 out in fact Alcoa was merely asking for  
10 indemnification to remediate a problem which had  
11 been identified on Fairchild's watch by its own  
12 consultants? Did you ask that?13 A. No. Because this is not related to  
14 remediation. This is related to an  
15 investigation. This letter at tab 22 that I  
16 wrote to Mr. Lease is specifically addressing  
17 the document that he had sent to me. The  
18 remedial investigations at Montbrison. That's  
19 what I'm addressing. Not addressing -- because  
20 that is what he sent to me as a claim. He  
21 wanted reimbursement for all of these various  
22 studies and investigations.

23 Q. Let's develop that a little bit.

24 A. Okay.

25 Q. You knew by the time you got to the

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1 SUSAN HALL - CROSS

2 for expenses related to proposal and  
3 assessments." Right?

4 A. Yes.

5 Q. In the prior paragraph you took on  
6 the alternative leg, you took the position that  
7 "Alcoa had shown you nothing that evidences  
8 contamination arising out of a release or  
9 threatened release. It can point to no  
10 violations or alleged violations of  
11 Environmental Law prior to closing." Right?

12 A. That is what it says.

13 Q. Isn't it true, you may not know  
14 this, but I'll ask you anyway, that back in 1999  
15 ERM -- you know who ERM is?

16 A. Yes.

17 Q. ERM did a limited Phase II  
18 investigation for Fairchild at the very same  
19 facility and concluded that it was likely that a  
20 remediation for TPH, that is hydrocarbons and  
21 chlorinated hydrocarbons would have to be  
22 performed at the site.23 A. I don't recall that. If you want  
24 to represent to me that's the case, I'll accept  
25 that.

1 SUSAN HALL - CROSS

2 company -- I apologize for forgetting, when  
3 exactly did you arrive at Fairchild?4 A. I started right around October of  
5 2004.6 Q. By October 2004 Fairchild had  
7 received all of the Phase II studies that Alcoa  
8 had conducted after the closing; isn't that  
9 right?

10 A. Yes. I believe that is correct.

11 Q. So you had access to the Phase II  
12 studies; correct?

13 A. Yes.

14 Q. Before you wrote back telling Alcoa  
15 for these various reasons set forth in  
16 Claimant's Exhibit 456 you weren't going to pay  
17 for it, did you look at the information you  
18 already had from Alcoa in the Phase II studies  
19 about this very facility; yes or no?20 A. Yes, I looked at the Phase II. I  
21 cannot tell you exactly when. But, I will tell  
22 you there is a reasonably good chance I did look  
23 at it before writing this letter.

24 Q. Okay.

25 A. I can't say with certitude but I

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1 SUSAN HALL - CROSS  
 2 think there was a reasonably good chance.  
 3 Q. Let me show you Exhibit 56. Do you  
 4 recognize this as the Phase II report for the  
 5 Montbrison facility?  
 6 A. Yes.  
 7 Q. You don't have any reason to doubt  
 8 you had this at Fairchild by the time you  
 9 arrived and certainly when you wrote this letter  
 10 in March of 2005 rejecting the claim; correct?  
 11 A. I definitely had it in 2005.  
 12 Q. Would you turn to the page that  
 13 bears the Bates number ending 32274.  
 14 A. Yes.  
 15 Q. Do you have that page?  
 16 A. I do.  
 17 Q. I would like you to look down at  
 18 the bottom of the page. Your Honor, are you  
 19 with me?  
 20 THE ARBITRATOR: I have it, yes.  
 21 Q. Bottom of the page it says "In  
 22 1999, ERM recommended further soil and  
 23 groundwater investigations to Fairchild to  
 24 verify the results and to delineate the impacted  
 25 areas; however, no further studies were done

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1 SUSAN HALL - CROSS  
 2 until this Phase II investigation. According to  
 3 AFS Montbrison, no other environmental  
 4 assessments or investigations were completed  
 5 until the ERM ESA in May 2002."  
 6 Do you see that?  
 7 A. I do.  
 8 Q. Let me see if I can summarize what  
 9 happened here, see if you agree with me.  
 10 Fairchild had consultants in 1999  
 11 who looked into the same problems and who  
 12 recommended further soil and groundwater  
 13 investigations to verify results and delineate  
 14 the impacted areas; correct?  
 15 A. That is what that says.  
 16 Q. The Phase II which my client  
 17 provided to your company reported that and also  
 18 reported no further studies were done until the  
 19 current study done by Alcoa; correct?  
 20 A. That's what it says.  
 21 Q. So Alcoa then comes back to you  
 22 with the Phase II studies, provides them to your  
 23 predecessors before you get there. And now  
 24 comes in and says we want to do the further  
 25 studies at that very site. They have given you

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1 SUSAN HALL - CROSS  
 2 a Phase II report that told you three years  
 3 before the same studies were recommended and  
 4 never done. You turned them down; right;  
 5 correct?  
 6 A. Yes but not because --  
 7 Q. I didn't ask you why. I asked you  
 8 if you accept the chronology that is laid out in  
 9 words of English in the Phase II which was  
 10 sitting somewhere in your offices and which you  
 11 say you think you consulted before you rejected  
 12 our claim, you admitted all of that. My only  
 13 question is did you then turn us down?  
 14 A. That's correct.  
 15 Q. Thank you. By the way, which  
 16 column on your chart is this one?  
 17 MR. ZUROFSKY: There is detailed  
 18 back up, by the way.  
 19 MR. CHESLER: I know, since it is  
 20 the witness' chart.  
 21 Q. It is tab 2 in the back just if you  
 22 would like it.  
 23 A. Sorry?  
 24 Q. Do you know which column of your  
 25 chart the Montbrison request is in?

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1 SUSAN HALL - CROSS  
 2 A. I took it out of my binder.  
 3 Q. It is tab 2.  
 4 A. I believe it would be largely in  
 5 the second category, which is the third column.  
 6 Q. The one that says we ignored your  
 7 attempts to participate?  
 8 A. Yes.  
 9 Q. I want you to just verify for me if  
 10 your belief in that regard is right.  
 11 A. That's correct.  
 12 Q. Let me ask you again, now that you  
 13 have got the Phase II in front of you, which was  
 14 available to you at the time, and you see that  
 15 Fairchild's own consultant recommended the  
 16 studies, Fairchild then didn't do the studies,  
 17 we came along, did a Phase II, we gave you the  
 18 Phase II that says the studies should be done,  
 19 we then said we want you to pay us for the  
 20 studies and you said no, I won't pay you for the  
 21 studies, do you stand by your testimony that the  
 22 bill for that should be under the category that  
 23 says we didn't allow you to participate in the  
 24 process? Yes or no?  
 25 A. Yes.

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1 SUSAN HALL - CROSS  
 2 Q. Thank you.  
 3 MR. CHESLER: Just give me a  
 4 moment, your Honor.  
 5 Q. I want to go back to one other  
 6 topic that I failed to cover on the subject of  
 7 the definition of Environmental Law.  
 8 Would you go back to the contract  
 9 in tab 1, please. In particular I want you to  
 10 look first at section 1.88. Which appears on  
 11 page 12 which has a Bates number of 2738.  
 12 A. I'm there.  
 13 Q. You see 1.88 is the definition of  
 14 Law; right?  
 15 A. Yes.  
 16 Q. "Shall have the meaning set forth  
 17 in section 3.5" correct?  
 18 A. Yes.  
 19 Q. Let's go to 3.5 which is on  
 20 page 29. Do you have that that?  
 21 A. I do.  
 22 Q. There is a lot of words in there,  
 23 lawyers must have been paid by the word for this  
 24 agreement. Go down to iv.  
 25 A. Yes.

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1 SUSAN HALL - CROSS  
 2 Q. This is another one of those  
 3 sections that set off with separate subparts,  
 4 commas then the word "or," the disjunctive;  
 5 correct. If you look down at the last one or iv  
 6 it says as part of the definition, you can look  
 7 at the rest if you like, I am not trying to  
 8 sneak anything by you, but I am trying to save  
 9 some time.  
 10 It says "Violate any order, writ,  
 11 injunction, decree, judgement, permit, license,  
 12 ordinance, law, common law, statute, code,  
 13 standard, requirement, rule or regulation (Law)  
 14 applicable to any of the sellers, any of the  
 15 Transferred Fasteners Subsidiaries, or any of  
 16 the Fasteners Business Assets or the Fasteners  
 17 Business."  
 18 Then it goes on to say "With such  
 19 exceptions in the case of the foregoing  
 20 clauses."  
 21 Would you agree with me at least on  
 22 reading it here OSHA falls under that  
 23 definition?  
 24 A. I frankly would have to read the  
 25 whole thing because I don't know what this

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1 SUSAN HALL - CROSS  
 2 modifies, but looking at it in isolation, it is  
 3 very broad. It may well and probably would  
 4 include regulations and statutes, which OSHA is.  
 5 Q. Right. By the way, the definition  
 6 of Environmental Law doesn't say that you should  
 7 not read the definition of the term Law into the  
 8 word law in Environmental Law; does it?  
 9 A. Say that again, please.  
 10 Q. When you look at the definition of  
 11 Environmental Law, one of the two words is the  
 12 word law; correct?  
 13 A. Let me look at it, if you don't  
 14 mind.  
 15 Q. 3.24G ii.  
 16 A. And the question again.  
 17 Q. Yes. First question is, I think it  
 18 is kind of self-evident in English, we should  
 19 get Mr. Hodge back, he is an English teacher.  
 20 Environmental Law consists of two words, one of  
 21 which is the word law; correct?  
 22 A. That's correct.  
 23 Q. In the contract it begins with a  
 24 capital L because it is a term of art?  
 25 A. That's correct.

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1 SUSAN HALL - CROSS  
 2 Q. There is nothing you know of in  
 3 this agreement that says when the word law  
 4 appears as part of the definition of  
 5 Environmental Law you should apply a definition  
 6 of the term law that is different from what the  
 7 same agreement says the definition of law is; is  
 8 there?  
 9 A. You kind of lost me. I think I  
 10 generally agree with you.  
 11 Q. I am just asking you -- let me make  
 12 it simpler. Law is defined term, law is one of  
 13 the terms that makes up the term Environmental  
 14 Law; correct?  
 15 A. Correct.  
 16 Q. You would think under contract  
 17 principles you learned in your first year of law  
 18 school, if law is a defined term whenever you  
 19 find it in the agreement you apply the  
 20 definition of law under the agreement; right?  
 21 A. I agree. But I think subsection B  
 22 makes it clear that OSHA regulations in an  
 23 environmental context are included. I don't  
 24 think that this definition of law, this broad  
 25 definition of law changes my interpretation of

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1 SUSAN HALL - CROSS  
 2 what Environmental Law is.  
 3 Q. It may not change your  
 4 interpretation, but it may change somebody  
 5 else's.  
 6 I just want to be sure we're clear  
 7 that you don't have any basis to dispute reading  
 8 the contract's own definition of law into the  
 9 word law, which is part of the term  
 10 Environmental Law; is that right?  
 11 A. That's just the way it is written,  
 12 Mr. Chesler. I couldn't possibly disagree.  
 13 Q. Thank you. I have two other  
 14 topics. Torrance. Then I want to go back and  
 15 ask some questions about that chart the witness  
 16 spent a good deal of her time on on direct, then  
 17 I will be done.  
 18 You testified about this Torrance  
 19 situation with the regulators, do you recall  
 20 that, in California, the consent decree?  
 21 A. Yes.  
 22 Q. Did you read the Consent Decree?  
 23 A. Yes, I did.  
 24 Q. Did you see there is a section,  
 25 let's look at it, tab 36. Rather than create

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1 SUSAN HALL - CROSS  
 2 more paper we'll use your copy.  
 3 This is the letter that forwarded  
 4 to you the Consent Agreement for Torrance;  
 5 correct?  
 6 A. Yes.  
 7 Q. Did you read it at the time?  
 8 A. Yes.  
 9 Q. Would you turn to the page that  
 10 ends 151, please.  
 11 A. Yes.  
 12 Q. You see on that page there is a  
 13 heading Facility Investigation, FI?  
 14 A. Correct.  
 15 Q. You understand this was a facility  
 16 investigation which was required by the  
 17 governmental authorities for Alcoa to perform  
 18 within 90 days of the effective date of the  
 19 agreement; right?  
 20 A. That is what it says in the  
 21 document.  
 22 Q. In fact, when Alcoa submitted to  
 23 you a work plan to perform this very facility  
 24 investigation you rejected the indemnification  
 25 claim; correct?

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1 SUSAN HALL - CROSS  
 2 A. I don't know that, that is correct.  
 3 Are you suggesting that Alcoa submitted the work  
 4 plan that is referenced in this consent order?  
 5 Q. Yes.  
 6 A. Oh, yes that's right because --  
 7 Q. Just yes they did?  
 8 A. What is the question again?  
 9 Q. Didn't Alcoa submit to Fairchild  
 10 the work plan to be done as required by the  
 11 facility investigation, paragraph 6.1 of the  
 12 decree and didn't you refuse the indemnification  
 13 claim?  
 14 A. Yes. Absolutely.  
 15 Q. Do you know that before Alcoa  
 16 signed the Consent Decree, it was told by the  
 17 government regulators in California that either  
 18 it enter into the decree or the agencies would  
 19 issue a unilateral order demanding that the site  
 20 be remediated in a timely fashion? Were you  
 21 aware of that?  
 22 A. No, I wasn't.  
 23 Q. Let's look at Exhibit 167. You see  
 24 this is a, appears to be email from Charles  
 25 Stone at the DTSC. You know what that is?

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1 SUSAN HALL - CROSS  
 2 A. Yes.  
 3 Q. What is it?  
 4 A. Department of Toxic Substances  
 5 Control in California.  
 6 Q. To Gregory Pfeifer. Do you see  
 7 that?  
 8 A. Yes.  
 9 Q. You see that if you look about a  
 10 third of the way down the page you will see an  
 11 email address for Mr. Pfeifer that says at  
 12 Alcoa.com?  
 13 A. Yes.  
 14 Q. This note from Mr. Stone to Mr.  
 15 Pfeifer dated February 10, 2006. February 10,  
 16 2006 is before the decree was entered into which  
 17 was slightly or shortly thereafter in February  
 18 of the same year; correct?  
 19 A. Yes.  
 20 Q. The regulator said to Mr. Pfeifer,  
 21 "At this date there are two options available to  
 22 Alcoa. Either enter into the CASC or DTSC --"  
 23 into the CASC which is an acronym for the  
 24 decree; correct?  
 25 A. Yes.

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SUSAN HALL - CROSS

Q. "Or DTSC will issue an it should be a unilateral order demanding the site be remediated in a timely fashion. Should you have any questions please feel free to contact me." That is what it says; right?

A. That is what it says.

Q. As you said before you are aware the contract says we both conduct and control all negotiations and interactions with government agencies related to environmental conditions; right?

A. The agreement says what it says.

Q. Notwithstanding this ultimatum from the DTSC, I take it you stand by your position you were correct in rejecting all of Alcoa's indemnification claims, even including the claims for doing the investigation provided by the decree; is that correct? Yes or no?

A. Yes.

Q. That is in your chart, too, the expenses you incurred in connection with Torrance as covered in your direct are covered in one of the columns on your chart?

A. I believe they are.

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SUSAN HALL - CROSS

Q. Which column is that one in?

A. Probably column 3. Let me double-check I believe it is in column 3. There might be some in column 2.

Q. Column 3 is items for which Fairchild has otherwise been denied its right to participate; correct?

A. Yes.

Q. If it is in column 2 it is items for which we ignored your right to participate?

A. Right. It is column 3.

Q. You don't quarrel -- quarrel is the wrong word, you would be quarreling with yourself. You don't change your view on changing that item Torrance Consent Decree related expenses on this chart; right? Your position remains as it was when you got here this afternoon on that subject; correct?

A. Yes.

Q. A few questions about the chart then we're done. One of the things you did was you took this first column and said those are the items that Alcoa admitted that it didn't

give us notice about; right?

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SUSAN HALL - CROSS

A. That's, yes, that is what you gave us at the first mediation.

Q. In fact --

A. Arbitration.

Q. In fact was the testimony from Mr. Lease, that those were items for which he could not point to a particular piece of paper, but in fact, in his view, he showed the documentation, they were covered by other notices; isn't that what he said?

A. I was not here for his entire testimony. I don't know.

Q. Well, did you compile this chart or did the lawyers compile it?

A. This was a joint effort.

Q. Joint effort. You came in and swore to it, did you verify all the numbers in here belonged in here and they were completely consistent with the evidentiary record here?

A. I know and confirmed that columns 1 and 2 represent -- column 1 represents the list that Alcoa gave us at the first arbitration hearing. And column 2 represents the asterisked items that appeared in letters that John Lease

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SUSAN HALL - CROSS

sent to Fairchild in July of 2005 and February 2006. And there is no overlap.

Q. So if Mr. Lease testified with respect to the first column items, that they were simply items for which there wasn't a specific piece of paper that referred to it, but he testified at length about what the notice was, you didn't review that testimony before you put or had the lawyers put all those numbers in column 1; is that correct?

A. That's correct. My understanding was that --

Q. You answered my question.

THE ARBITRATOR: If she wants to clarify, I won't cut her off.

Q. Your understanding was?

A. It was my impression that Alcoa in its own damage claim, I could be wrong, had reduced its damage claim by the 2.1 million.

Q. You could be wrong; right?

A. I could be.

Q. It is also your testimony, I take it -- withdrawn.

Let me ask you this: There are

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Page 2894

1 SUSAN HALL - CROSS  
 2 machine guarding items in this first column;  
 3 aren't there?  
 4 A. I'd have to look at the backup.  
 5 Q. Look at the backup, for example,  
 6 there is one for 14,770 at Simi listed in the  
 7 backup. Why don't you look at Simi.  
 8 A. In column 1 or 2?  
 9 Q. Column 1.  
 10 A. Yes.  
 11 Q. Page 3. Right?  
 12 A. Yes.  
 13 Q. So you included this one, if I  
 14 understand your testimony, because you believe  
 15 that Alcoa said it shouldn't be in the damage  
 16 claim, because there was no specific notice for  
 17 that; correct?  
 18 A. Correct.  
 19 Q. You would agree with me, wouldn't  
 20 you, you got many, many, many notices for  
 21 payment of machine guarding and you refused all  
 22 of them because you don't believe machine  
 23 guarding is covered; right?  
 24 A. That's not the same issue.  
 25 Q. Is the answer to my question yes?

Page 2895

1 SUSAN HALL - CROSS  
 2 A. Ask it again.  
 3 Q. You have rejected all of the claims  
 4 that have been submitted to you for machine  
 5 guarding at many of the other facilities; isn't  
 6 that so?  
 7 A. That's correct. Although I don't  
 8 think we ever got a Simi Valley bill.  
 9 Q. Ms. Hall, under oath if you had  
 10 gotten a letter like all the other letters and  
 11 this one said give us the \$14,000 for Simi  
 12 Valley, you would have handled that one exactly  
 13 the same way you handled all the others;  
 14 wouldn't you?  
 15 A. Yes, I would.  
 16 Q. Thank you. You also list in this  
 17 first column \$91,000 for mobile equipment  
 18 compliance at various facility including  
 19 Stoughton?  
 20 A. Are you on the big one now?  
 21 Q. On the first column, still on the  
 22 first column. I am asking you to confirm in the  
 23 first column in, for example, the Fullerton  
 24 line, the Torrance line -- excuse me, let me  
 25 restart.

Page 2896

1 SUSAN HALL - CROSS  
 2 In the City of Industry line, the  
 3 Stoughton line and St. Cosme line, each one of  
 4 those contains mobile equipment items which when  
 5 you add them up are over 90,000. It is late, we  
 6 don't need to take the time. If those are in  
 7 your backup you wouldn't dispute those?  
 8 A. No, I wouldn't.  
 9 Q. Would you also agree with me you  
 10 got mobile equipment notices for other  
 11 facilities, for example Fullerton and Torrance,  
 12 and you rejected those claims; correct?  
 13 A. Could you show me exactly what  
 14 you're referring to.  
 15 Q. Sure. For example, let me show you  
 16 Exhibit 46, tab 7 in your book.  
 17 A. Tab 7 is a letter from Mr. Lease to  
 18 Mr. Hodge.  
 19 Q. Right. If you look at page 136, the  
 20 bottom entry on 136 is for mobile equipment;  
 21 isn't it?  
 22 A. I am at tab 7?  
 23 Q. Tab 7, Fullerton.  
 24 MR. ZUROFSKY: Bates stamp 42 at  
 25 the end I think is what you're looking for.

Page 2897

1 SUSAN HALL - CROSS  
 2 Q. I am looking -- my problem, your  
 3 Honor, I am looking at different documents from  
 4 different books. Let me see, I think I am  
 5 looking in the wrong tab 7. I feel better  
 6 because young Mr. Slifkin made the same mistake  
 7 before. So it is not my age.  
 8 I've got it, tab 7 in your book.  
 9 A. Okay.  
 10 Q. Now I want you to look at the page  
 11 that ends with 42.  
 12 A. Yes.  
 13 Q. Would you agree with me the bottom  
 14 entry on that page is 40,000 for mobile  
 15 equipment?  
 16 A. There is an estimation of \$40,000  
 17 for mobile equipment.  
 18 Q. Yes. That is a claim you have not  
 19 paid; right?  
 20 A. No, we have not paid. First of  
 21 all, this is not a claim. It is an estimate.  
 22 Q. An estimate. Right. Later on you  
 23 got a claim and you rejected that?  
 24 A. Correct.  
 25 Q. My only point here is you listed a

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SUSAN HALL - CROSS

mobile equipment item for St. Cosme, for Stoughton and for City of Industry over \$90,000 in claim 1 - column 1, I should say, because you didn't get a particular piece of paper for those. I am simply trying to get you to agree with me to what I think is a fact, which is you got claims for precisely the same category of indemnification from Alcoa with respect to other facilities and you rejected all of those; correct?

A. Got letters from Alcoa indicating they thought they were going to incur expenses for certain activities. The activities, the health and safety activities in my estimation are not Fastener Environmental Liabilities. We were never given any further - even assuming they are, there was nothing given to us to let us know what Alcoa was doing until we got the bill.

Q. Right. We have been down that road before. I think the answer to my question is yes, you rejected the other claims for whatever reasons you thought were good reasons. Their claims for the same kind of equipment at other

Page 2900

SUSAN HALL - CROSS

cover letters Fairchild had not been given notice. This is just a compilation of what Alcoa told us.

Q. Ms. Hall, I don't want to prolong this. I have to correct you about that. My question was about what he said in that chair at this proceeding.

THE ARBITRATOR: Yesterday?

MR. CHESLER: No, in the first phase, your Honor, Mr. Lease who was in our case back in January.

Q. My point is you didn't go back and look at his testimony. I am telling you he testified in fact that those were simply two examples and there were others. You are saying you don't recall that; correct?

A. Okay. I am also saying something as imprecise as there were others wouldn't allow us to do anything other than what we did here. What we did here is we took the numbers that Alcoa gave us.

Q. Okay.

A. We can agree to disagree.

Q. We can and we do.

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SUSAN HALL - CROSS

facilities. Here you put it in a column because you didn't get a particular piece of paper for that facility, even if it was covered, in Mr. Lease's opinion, for other things?

A. The first two columns are Alcoa's admissions.

Q. Your interpretation of Alcoa's admissions?

A. However you like to characterize it I would regard them as Alcoa's admissions.

Q. For example, you said the second column you took all the asterisk numbers out except for two which you said were the only two Mr. Lease identified as mistakes; right?

A. Yes. We were trying to be as accurate as we could.

Q. Didn't Mr. Lease say there were numerous other examples of mistakes, but he only paused on those in his testimony; you didn't read this?

A. I did not read his testimony, but I was here for part of it. I do not recall. He is the one that sent us the document. He asterisked the items that he admitted in his

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SUSAN HALL - CROSS

A. On whether this is an admission or not.

Q. With respect to that second column, isn't it also the case that, let's take one other example in that column, you listed for Toulouse, look at your back up for that column, look at Toulouse.

A. You mean the large second column?

Q. No. I mean the second column under your first category.

A. Okay. Let me find it, please.

Q. Page 6?

A. Yes, I am there.

Q. You list 444,900 for machine guarding compliance at Toulouse. All of that is in that second half of your first category; correct? Within the Toulouse number which totals -- in fact it is almost all of the 511,000; isn't it?

A. Yes.

Q. Isn't it a fact that you received, or Fairchild received a notification of machine guarding expenses at Toulouse way back in June of 2003 before any work was done, before any of

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Page 2902

1 SUSAN HALL - CROSS  
 2 that money was spent; yes or no?  
 3 A. No.  
 4 Q. No?  
 5 A. No. What Fairchild received were  
 6 estimates.  
 7 Q. Isn't it a fact you received an  
 8 estimate for machine guarding work before any of  
 9 that work was done?  
 10 A. That's correct.  
 11 Q. We been down the road before of  
 12 whether you had inspection rights, you could  
 13 look at the machines, we don't have to repeat  
 14 that. You recall that testimony?  
 15 A. Yes. We also been down the road we  
 16 requested additional information and never got  
 17 it.  
 18 Q. Yes, I heard that.  
 19 THE ARBITRATOR: Seems like we  
 20 been down both roads.  
 21 MR. CHESLER: I apologize, your  
 22 Honor, I am trying to wrap this.  
 23 THE ARBITRATOR: I know you are.  
 24 Q. Also included in this category,  
 25 again under second column of your first

Page 2903

1 SUSAN HALL - CROSS  
 2 category, are expenses that were incurred after  
 3 Mr. Lease's letter with the asterisk came;  
 4 right?  
 5 A. I'm not sure.  
 6 Q. You're not sure. All right.  
 7 A. In the second column?  
 8 Q. Yes.  
 9 A. My understanding the second  
 10 column -  
 11 Q. Let me try to ask you a question I  
 12 think will clarify. Why don't you look and see  
 13 whether under Fullerton there is an item for  
 14 154,218 for combustion safety.  
 15 A. That's correct.  
 16 Q. Isn't it the case, Ms. Hall, that  
 17 you received a letter from John Lease back in  
 18 July of 2005, the letter with the asterisk on  
 19 it, and the amounts that had been spent on that  
 20 item as of that time was only \$34,740? If you  
 21 need to look at that, tab 3.  
 22 A. What item is it?  
 23 Q. Tab 3, page 2 of 6, under Fullerton  
 24 about three items up from the end of Fullerton  
 25 section.

Page 2904

1 SUSAN HALL - CROSS  
 2 A. Right. 34,000 you're talking  
 3 about?  
 4 Q. Yes. Let's get the record clear.  
 5 You put in this column you said everything that  
 6 was subject to Mr. Lease's asterisk; right?  
 7 A. That's right.  
 8 Q. The asterisk letter told you my  
 9 client had spent 34,000 and change on this item  
 10 as of the time he gave you the notice about it,  
 11 which you say was late; right?  
 12 A. Correct.  
 13 Q. Since that time approximately  
 14 \$120,000 has been spent on that after you got  
 15 Mr. Lease's notice which you say is late;  
 16 correct?  
 17 A. Apparently.  
 18 Q. You took all of that money and put  
 19 it into this chart and said we don't owe it to  
 20 you because Mr. Lease put an asterisk on a  
 21 letter back in July of 2005; right?  
 22 A. He put asterisk on the July letter  
 23 and also in the February 2006 letter.  
 24 Q. Ms. Hall, stay with me. He told  
 25 you about combustion safety work at Fullerton

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1 SUSAN HALL - CROSS  
 2 back in July of '05. He put an asterisk on it  
 3 to indicate for some reason they hadn't sent you  
 4 notice before and told you they spent 34,000;  
 5 right?  
 6 A. That is what appears here.  
 7 Q. Now they spent over 150,000 almost  
 8 all of which was spent after you got that notice  
 9 and you put the entire amount on to your summary  
 10 chart; right?  
 11 A. We put onto our summary chart the  
 12 items that Mr. Lease had asterisked. He  
 13 asterisked that item. Yes. Are you suggesting  
 14 we should have gone through six pages - never  
 15 mind. I am not asking the questions.  
 16 Q. I am asking you when you come to  
 17 court and swear to things under oath you have to  
 18 be right. That is what I am suggesting.  
 19 A. I disagree. I have to be truthful.  
 20 Q. Excuse me. I'm asking you whether  
 21 or not you included on this chart approximately  
 22 \$120,000 of expense that Alcoa incurred after  
 23 Mr. Lease sent you notice of this with an  
 24 asterisk on it. You ought to be able to answer  
 25 that yes or no.

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SUSAN HALL - CROSS

A. Yes.

Q. Thank you. Now let's go to the next column, column 2. This entire column, I believe you said consists of three things. The Temple Avenue pump and treat item, right, investigations or assessments and work that was done on items that were the subject of the so-called gap letters. Do you remember saying that on direct?

A. Yes. These are the gap letters and these are follow-up investigations that had been done pursuant to the Phase II reports.

Q. And Temple pump and treat; right?

A. I think so.

Q. Temple pump and treat, that is one where Fairchild had used a consultant named EnviroSolve to do the work when it owned the facility; right?

A. I'm sorry.

Q. Fairchild had used a consultant named EnviroSolve to do the pump and treat work at Temple when they owned the facility?

A. That's correct. Yes.

Q. At least for the whole first year

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SUSAN HALL - CROSS

or so of Alcoa's ownership of the facility we used the same consultant you used; didn't we?

A. I think it was for a few months, but yes, you did. Alcoa did use EnviroSolve for the first few months.

Q. You rejected the claims for EnviroSolve's bills to us, your consultant running the same facility at the Temple facility as well as the claims once the other consultants came in; didn't you?

A. I did.

Q. This column also includes the bill for the waste water treatment at St. Cosme; doesn't it? This second major column?

A. Yes, it does.

Q. That is the facility where there has been testimony here that Fairchild, when it owned it, kept two sets of books and lied to the regulators, do you recall that testimony?

A. I do.

Q. You recall the testimony about how if in fact they hadn't kept the real waste water discharge levels secret from the regulators, that the fact they were in excess of the

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SUSAN HALL - CROSS

regulatory limits would have been known to the regulators on Fairchild's watch rather than on our watch; do you recall that?

A. I don't recall the testimony coming out that way. But that's the implication, yes.

Q. I take it -- certainly Mr. Miller said this -- I take it you would agree, if that fact had become known to the regulators on your watch, there were lies being told to the regulators and waste water facility was above its limits then Fairchild would have paid to fix that; right?

A. I can't really speculate on what would have happened. I know Fairchild would have done the right thing.

Q. When we tried to do the right thing you turned down the request; correct?

A. You say you tried to do the right thing, what are you talking about?

Q. Replace the waste water treatment so that it complied with the law, stop lying to the regulators; would you agree those are the right things to do?

A. I would agree that stopping lying

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SUSAN HALL - CROSS

to the regulators, if that's what happened, was the right thing to do.

In terms of the waste water treatment plant, again, that to me would have been a legitimate cost, proper Fastener Environmental Liabilities had we participated in the fix.

Q. Two more questions then I'm done. I am on the third and final category of your chart.

A. Yes.

Q. There are loads are examples your Honor, if we had an infinite period of time we can do this. I really --

THE ARBITRATOR: I am available on Friday, you know. I think we are going to be worn out by Friday.

MR. CHESLER: There is at least one thing on which I hardly agree with my colleague, Mr. Zurofsky, that is to try to get done by tomorrow night.

THE ARBITRATOR: Right.

Q. Ms. Hall, this third category, it includes among other things expenditure of

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1 SUSAN HALL - CROSS  
 2 113,000 for septic system field at Stoughton,  
 3 Mass; does it?  
 4 A. Yes.  
 5 Q. It also includes 74,000 for  
 6 degreaser at Fullerton; does it?  
 7 A. I have to look at the background.  
 8 Q. If it is in the backup you don't  
 9 dispute it?  
 10 A. Right.  
 11 Q. Isn't it the case both of those  
 12 items were placed by Fairchild in its letter to  
 13 its own auditors as potential liabilities it  
 14 felt it needed to disclose to the auditors?  
 15 A. I believe that's correct.  
 16 Q. Let me make sure we got this clear,  
 17 Fairchild thought these were sufficiently  
 18 probable liabilities and estimable liabilities  
 19 so under the financial accounting rules they  
 20 were obligated to notify their auditors of them  
 21 and when we came in and asked for reimbursement  
 22 for precisely those items you turned it down;  
 23 isn't that true, yes or no?  
 24 A. Yes, that's true.  
 25 Q. Last question. You testified it

Page 2911

1 SUSAN HALL - CROSS  
 2 was your understanding that Alcoa had its own  
 3 compliance directives. I objected on foundation  
 4 ground. Do you remember that?  
 5 A. Yes.  
 6 Q. You said oh, well, I read these  
 7 documents. It is clear to me they have their  
 8 own compliance directives. You didn't feel it  
 9 was appropriate to pay for compliance with  
 10 Alcoa's rules as opposed to legal rules?  
 11 MR. ZUROFSKY: There are two  
 12 questions, I don't know if she agreed to the  
 13 first question.  
 14 Q. I will break it out. Do you recall  
 15 testifying from reading documents you concluded  
 16 that Alcoa had its own set of directives,  
 17 compliance directives?  
 18 A. I saw those terms right in invoices  
 19 which Alcoa sent us that said work was done to  
 20 achieve Alcoa's compliance standards.  
 21 Q. You were asked a question on  
 22 direct-examination, the specifics of which I  
 23 don't recall, but do you recall your answer  
 24 which was you did not think it was appropriate  
 25 to reimburse Alcoa for expenses incurred to

Page 2912

1 SUSAN HALL - CROSS  
 2 comply with its own standards; do you recall  
 3 that?  
 4 A. Yes.  
 5 Q. Tell me how Alcoa's standards  
 6 compare to the regulatory standards in place in  
 7 those facilities.  
 8 A. I would have no idea without  
 9 looking at them side by side.  
 10 Q. You have no idea; right?  
 11 A. I would have no idea without  
 12 looking at them side by side. There could be  
 13 overlap. You can have an Alcoa standard that  
 14 was the same as, for example, an OSHA standard  
 15 on air emissions in the workplace. Then that  
 16 would qualify. Just the word Alcoa standards,  
 17 there is nothing in this contract that requires  
 18 Fairchild to indemnify Alcoa for its own  
 19 standards, which I understand are higher in many  
 20 instances than what is required.  
 21 Q. How do you know that? You just said  
 22 you have no idea how they compare; didn't you?  
 23 A. I said without looking at a  
 24 specific standard relating to a specific item.  
 25 I am talking in general terms right now.

Page 2913

1 SUSAN HALL - REDIRECT  
 2 MR. CHESLER: I'm done.  
 3 THE ARBITRATOR: Thank you very  
 4 much, counselor.  
 5 MR. ZUROFSKY: I will be very  
 6 quick. We will get done in very brief time.  
 7 RE-DIRECT EXAMINATION BY MR. ZUROFSKY:  
 8 Q. Ms. Hall, just going to clear up a  
 9 couple things. I know it is late, it has been a  
 10 long day.  
 11 The first question Mr. Chesler  
 12 asked you was whether or not Fairchild has paid  
 13 any particular claims under 11.6A. Do you  
 14 recall that, or second question he asked?  
 15 A. 11.6A?  
 16 Q. Yes, of the Indemnification  
 17 Agreement.  
 18 A. Yes.  
 19 Q. You said no; right?  
 20 A. That's right.  
 21 Q. Has Fairchild assumed any  
 22 liabilities in connection with environmental  
 23 contamination matters at the facilities that are  
 24 at issue in this case?  
 25 A. Yes.

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Page 2914

SUSAN HALL - REDIRECT

Q. Which ones?

A. Fullerton.

Q. What did you assume there?

A. The Orange County water district filed a suit against Alcoa and Fairchild. Alcoa tendered the defense to Fairchild about a year and a half ago. We have assumed the defense costs since that time.

Q. Just for the record, the letter when you accepted those costs found in your book at tab 4, I believe it is. Is that the letter, Claimant's Exhibit 434?

A. Yes.

Q. In that case Fairchild has been paying directly the legal bills directly; right?

A. Paying it directly over \$100,000 at this point.

Q. If that claim had fallen under 11.6A, if you accepted it under 11.6A who would have been paying those bills and been responsible for those bills to date?

A. They would have been deducted from the reserve. There wouldn't have been any out of pocket on Fairchild's part.

Page 2915

SUSAN HALL - REDIRECT

Q. Alcoa would pay?

A. It would come out of a reserve.

Q. Which Alcoa would pay, the cash out to the lawyers?

A. They would have come out of the reserve.

Q. You may have the reserve and escrow -- we will clean it up in briefing because we are almost done for day.

A. It would depend -- never mind.

Q. That's fine. Second thing Mr. Chesler asked you about, you remember he talked about Mr. Miller yesterday when he asked Mr. Miller about a hypothetical situation about fall protection. Do you recall that?

A. Yes.

Q. He asked you about whether or not there were any health and safety claims you felt they made that are environmental health and safety claims. Do you recall that?

A. Do I recall his asking Mr. Miller that?

Q. Yes -- no, asking you that.

A. Yes.

Page 2916

SUSAN HALL - REDIRECT

Q. Two questions on that. Fairchild filed a brief in connection with the Alcoa summary judgement motion in this case. Do you recall that?

A. Yes.

Q. Do you recall in that brief Fairchild gave some examples of OSHA laws that had environmental health and safety aspects, do you recall that?

A. Vaguely.

Q. One of the things you testified on direct was about air emissions; do you recall?

A. That I'm aware of. That is one of the ones I am personally aware of.

Q. Turn to tab 5 in your book. I am not going to go through the whole list of these. I want to give one example to show. Do you know what confined space compliance is, Ms. Hall?

A. Yes.

Q. What is the issue with confined space?

A. The issue with confined space is that a worker, if a worker is going to be in a confined space there have to be certain safety

Page 2917

SUSAN HALL - REDIRECT

considerations. That's generally it.

Q. Is part of the regulation as you understand it because they can be exposed to toxins in the air?

A. Toxic air.

Q. Things like that?

A. Yes.

Q. Looking at the chart we were talking about on 1 of 6, there are other examples, I will do one.

THE ARBITRATOR: What tab?

MR. ZUROFSKY: Sorry, your Honor.

Tab 5. Claims, master claims chart.

Q. Page 1 of 6.

A. I'm there.

Q. Just do one of these. Item 9 confined space compliance.

A. Yes.

Q. In your view that's relating to potentially an environmental health and safety issue as you understand it.

MR. CHESLER: Counsel, I can't find where you're talking. I am behind tab 5 in your book.

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Page 2918

1 SUSAN HALL - REDIRECT  
 2 MR. ZUROFSKY: Yes. Page 1 of 6  
 3 on the chart. Master chart.  
 4 MR. CHESLER: Thank you.  
 5 MR. ZUROFSKY: Confined space  
 6 compliance.  
 7 Q. Do you see that?  
 8 A. I do.  
 9 Q. Is that the type of thing that  
 10 could involve environmental health and safety  
 11 issues?  
 12 A. Yes, it could.  
 13 Q. Do you believe there are other  
 14 examples of that type of issue?  
 15 A. On this chart?  
 16 Q. I am not going to ask you to go  
 17 through it.  
 18 A. There would be other examples.  
 19 Q. Next item I want to cover is you  
 20 remember Mr. Chesler spent some time with you  
 21 talking about why you didn't pick up the phone  
 22 and call Mr. Lease and say I want to visit the  
 23 facilities; do you remember that?  
 24 A. Yes.  
 25 Q. What is another way, is writing

Page 2919

1 SUSAN HALL - REDIRECT  
 2 another way to communicate with people than  
 3 picking up the phone?  
 4 A. Yes. That is what I did.  
 5 Q. Mr. Miller did it too; did he not?  
 6 A. Yes. Mr. Miller did, Mr. Beckford  
 7 did. I did.  
 8 Q. What was Alcoa's response when Mr.  
 9 Miller said I do want to find out more  
 10 information about the machine guarding issues?  
 11 A. Alcoa's response, which came from  
 12 their lawyer, was we are going to keep you fully  
 13 apprised as work plans and scope of work and  
 14 items like that are generated we will give them  
 15 to you. The letter is in here if you want more  
 16 information.  
 17 Q. I think we all know which one we  
 18 are talking about. Alcoa was doing the work,  
 19 they were actually looking at the machines and  
 20 making assessments of them?  
 21 A. That is my understanding.  
 22 Q. Was it your understanding Alcoa  
 23 promised to provide the results of that work to  
 24 Fairchild in response to Fairchild's request?  
 25 A. That is what Mr. Harvey said.

Page 2920

1 SUSAN HALL - REDIRECT  
 2 Q. He did not say, did he not no, no,  
 3 no I won't send you the documents just come on  
 4 down and take a look at the machines?  
 5 A. That is not what he said. He said  
 6 we will provide you with the information you're  
 7 seeking.  
 8 Q. In your view is that an effort by  
 9 Fairchild to participate in the process, to  
 10 request that information and review it?  
 11 A. Absolutely.  
 12 Q. Next item. Mr. Chesler spent some  
 13 time with you talking about Torrance Consent  
 14 Agreement. He showed you Exhibit 167. That  
 15 email from the DTSC. Do you recall he called it  
 16 the ultimatum.  
 17 A. Yes. I can't find it, but I  
 18 remember it.  
 19 Q. It is February 10.  
 20 A. Here it is.  
 21 Q. The email is dated February 10. Do  
 22 you see that?  
 23 A. Right.  
 24 Q. You make reference, we can pull it  
 25 up if you want in your letters to when you saw

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1 SUSAN HALL - REDIRECT  
 2 the first reference to a draft Consent  
 3 Agreement. Do you recall what date that was?  
 4 A. The letter is in here. To give you  
 5 the background on this, I knew by some time in  
 6 early 2006 that Alcoa had been discussing the  
 7 terms of a consent order with the DTSC  
 8 unbeknownst to us. Last time we knew about  
 9 Torrance they were dealing with the regional  
 10 board. Now they are dealing with the DTSC.  
 11 Essentially at this point in time,  
 12 February 10, the terms of the Consent Agreement  
 13 had already been agreed upon. I never seen this  
 14 before. But my reading of this is the DTSC is  
 15 saying, look, sign it or we'll issue a  
 16 unilateral order.  
 17 Q. I just want to make sure we have  
 18 it, we can look, is the date September 19, 2005  
 19 sound about right for you for the draft?  
 20 A. Yes. That's right.  
 21 Q. Is it your understanding Alcoa was  
 22 negotiating about this Consent Agreement for  
 23 five months before this email?  
 24 A. Absolutely.  
 25 Q. In your experience negotiating

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SUSAN HALL - REDIRECT

consent agreements, the terms of those agreements can in fact be negotiated?

A. That is exactly what it means you negotiate them. It is a negotiated agreement. As opposed to the regulatory agency just dictating what you will do.

Q. Mr. Chesler also asked you some questions about the chart. He asked a couple items about why you put certain asterisk items in column 1B. Do you recall that?

A. Yes.

Q. He showed you the Toulouse machine guarding item. Do you recall that?

A. Right.

Q. Is that an asterisked item on Mr. Lease's chart?

A. Yes.

Q. Have you ever heard Mr. Lease say or testify or anyone represent to you he said you know what, that shouldn't have been an asterisked item, I gave enough notice and I gave proposed response to that?

A. No.

Q. Next, Mr. Chesler pointed you to

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SUSAN HALL - REDIRECT

the Fullerton asterisk for combustion safety. This is the one about where the item was listed as 35 -- I forget the number, something thousand, and more money was spent after the asterisk letter. Do you recall that?

A. Yes.

Q. The asterisk letter we referred to which is the July asterisk letter, in connection with what was it sent to you?

A. In connection with the impending mediation.

Q. It was a notice of claim of money already spent; right?

A. Yes.

Q. Did Mr. Lease ever say to you, did he ever send you in report saying here is what we are doing on combustion safety here is what we propose going forward?

A. No. Absolutely not.

Q. You got the item there for 30 something thousand; right?

A. Correct.

Q. The next thing you heard from Mr. Lease on combustion safety was a bill for more

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SUSAN HALL - REDIRECT

money; right?

A. That's correct.

Q. One other. Do you remember Mr. Chesler also asked you a series of questions about how you had gotten notice say of a condition of machine guarding at the Fullerton facility but yet you placed the Simi Valley facility in column 1A. Do you recall that?

A. Vaguely.

Q. Do you recall the questions about how machine guarding, you had notice of machine guarding issues, he claims at some facilities but yet you rejected at the other facilities. Do you recall that?

A. Yes.

Q. Does the letter that tells you, in your view, a letter that says we think there is a machine guarding problem at Fullerton tell you they also think there is a machine guarding problem at Simi Valley?

A. No.

Q. Did you ever receive a letter that said we have machine guarding problem at Simi Valley?

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SUSAN HALL - REDIRECT

A. No. There was a letter that addressed machine guarding at one point at ten sites, something like ten sites, five or so of which were brand new.

Q. After that, that letter of course you testified on direct-examination was received after expenses had already been incurred at those sites?

A. Yes.

Q. To finish the last question on this, in fact the fact you got a letter saying we might be doing something at Fullerton but not one at Simi Valley, does that suggest to you perhaps there was not a problem at Simi Valley?

MR. CHESLER: Your Honor, even after five o'clock, I think that is leading.

MR. ZUROFSKY: I will withdraw it.

A. It suggests to me --

MR. CHESLER: It was withdrawn.

A. Thank you.

MR. ZUROFSKY: If you want to ask the judge to give direction to the witness, but don't yell at the witness.

MR. CHESLER: I didn't yell at the

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1 SUSAN HALL - RECROSS  
 2 witness.  
 3 MR. ZUROFSKY: I'm done.  
 4 RE-CROSS EXAMINATION BY MR. CHESLER:  
 5 Q. Two questions. You pointed to  
 6 confined space compliance --  
 7 THE ARBITRATOR: What is your  
 8 second question?  
 9 MR. CHESLER: You're right, your  
 10 Honor.  
 11 Q. You pointed to confined space  
 12 compliance as a type of workplace health and  
 13 safety that you say could fit within your  
 14 definition under the agreement; correct?  
 15 A. That's what I testified.  
 16 Q. In fact you rejected all of our  
 17 confined space compliance request for  
 18 indemnification; isn't that true? Yes or no?  
 19 A. Yes.  
 20 Q. Last question, in the letter from  
 21 July of 2005 that Mr. Lease sent you where he  
 22 gave you the list of items, some of which were  
 23 asterisked --  
 24 A. Yes.  
 25 Q. -- he said please contact me if

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1  
 2 CERTIFICATE  
 3 STATE OF NEW YORK )  
 4 : ss.  
 5 COUNTY OF NEW YORK )  
 6 I, TAMMEY M. PASTOR, a Registered  
 7 Professional Reporter, Certified LiveNote  
 8 Reporter and Notary Public within and for the  
 9 State of New York, do hereby certify that the  
 10 foregoing proceedings were taken before me on  
 11 February 28, 2007;  
 12 That the within transcript is a true  
 13 record of said proceedings;  
 14 That I am not connected by blood or  
 15 marriage with any of the parties herein nor  
 16 interested directly or indirectly in the matter  
 17 in controversy, nor am I in the employ of the  
 18 counsel.  
 19 IN WITNESS WHEREOF, I have hereunto  
 20 set my hand this \_\_\_\_ day of \_\_\_\_\_,  
 21 2007.  
 22  
 23  
 24  
 25 TAMMEY M. PASTOR, RPR, CLR

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1 SUSAN HALL - RECROSS  
 2 Fairchild would like further information  
 3 regarding any environmental liability. You  
 4 never contacted him; did you?  
 5 A. No.  
 6 MR. CHESLER: Thank you. No  
 7 further questions.  
 8 THE ARBITRATOR: See you all  
 9 tomorrow at 9:15.  
 10 (Time Noted: 6:17 p.m.)  
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